

United States
Circuit Court of Appeals
For the Ninth Circuit.

ROBERT M. DE LA LAMA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

No. 11664

United States
Circuit Court of Appeals
For the Ninth Circuit.

ROBERT M. DE LA LAMA,
Appellant,
vs.
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

Attorneys for Appellant:

MESSRS. WILL G. BEARDSLEY and
LYNN J. GEMMILL,

2307 Northern Life Tower,
Seattle 1, Washington.

Attorneys for Appellee:

MESSRS. J. CHARLES DENNIS and
ALLAN POMEROY,

1017 U. S. Court House,
5th and Spring,
Seattle 4, Washington.

United States District Court, Western District
of Washington, Northern Division

No. 47196

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT M. DE LA LAMA,

Defendant.

INDICTMENT

The Grand Jury charges:

Count I.

That on or about the 23rd day of March, 1946, at Seattle, in the Northern Division of the Western District of Washington, Robert M. De La Lama, knowingly, wilfully and unlawfully purchased three ounces of Opium Prepared for Smoking, which were not then in nor from the original stamped package.

All in violation of Title 26, U.S.C., Section 255a.

Count II.

That on or about the 23rd day of March, 1946, at Seattle, in the Northern Division of the Western District of Washington, Robert M. De La Lama, knowingly received and concealed three ounces of Opium Prepared for Smoking, which Opium had theretofore been imported and brought into the

United States of America contrary to law, and Robert M. De La Lama then knew said Opium had been so imported.

All in violation of Title 21, U.S.C., Section 174.

Count III.

That on or about the 23rd day of March, 1946, at Seattle, in the Northern Division of the Western District of Washington, Robert M. De La Lama, knowingly, wilfully and unlawfully purchased three (3) ounces, one hundred fifty (150) grains of Opium Prepared for Smoking, which were not then in nor from the original stamped package.

All in violation of Title 26, U.S.C., Section 2553a.

Count IV.

That on or about the 23rd day of March, 1946, at Seattle, in the Northern Division of the Western District of Washington, Robert M. De La Lama, knowingly received and concealed three (3) ounces, one hundred fifty (150) grains of Opium Prepared for Smoking, which Opium had theretofore been imported and brought into the United States of America contrary to law, and Robert M. De La Lama then knew said Opium had been so imported.

All in violation of Title 21, U.S.C., Section 174.

Count V.

That on or about the 25th day of March, 1946, at Seattle, in the Northern Division of the Western District of Washington, Robert M. De La Lama,

knowingly, wilfully and unlawfully purchased fifty-four (54) ounces, twenty-two (22) grains of Opium Prepared for Smoking, which were not then in nor from the original stamped package.

All in violation of Title 26, U.S.C., Section 2553a.

Count VI.

That on or about the 25th day of March, 1946, at Seattle, in the Northern Division of the Western District of Washington, Robert M. De La Lama, knowingly, wilfully and unlawfully received and concealed fifty-four (54) ounces, twenty-two (22) grains of Opium Prepared for Smoking, which Opium had theretofore been imported and brought into the United States of America contrary to law, and Robert M. De La Lama then knew said Opium had been so imported.

All in violation of Title 21, U.S.C., Section 174.

A true bill.

DUDLEY J. BENNETT

Foreman

J. CHARLES DENNIS

United States Attorney

ALLAN POMEROY

Assistant United States

Attorney

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court Feb. 26, 1947. Millard P. Thomas, Clerk; by Lee L. Bruff, Deputy.

District Court of the United States, Western
District of Washington, Northern Division

No. 47196

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT M. DE LA LAMA,

Defendant.

VERDICT

We, the jury in the above-entitled cause, find the defendant Robert M. De La Lama is guilty as charged in count I of the Indictment; and further find the defendant Robert M. De La Lama is guilty as charged in count II of the Indictment; and further find the defendant Robert M. De La Lama is guilty as charged in count III of the Indictment; and further find the defendant Robert M. De La Lama is guilty as charged in count IV of the Indictment; and further find the defendant Robert M. De La Lama is guilty as charged in count V of the Indictment; and further find the defendant Robert M. De La Lama is guilty as charged in count VI of the Indictment.

VALLIE D. DICKSON,

Foreman.

[Endorsed]: Filed May 21, 1947.

[Title of District Court and Cause.]

AMENDED MOTION IN ARREST OF
JUDGMENT OR FOR NEW TRIAL

Comes now the above named defendant and moves that the verdict of guilty returned against him by the jury be arrested and no judgment and sentence be imposed thereon for the following reasons:

1. That there is no evidence in the record in support of the Indictment or any of its counts.
2. There is no evidence to support the verdict.
3. The evidence affirmatively discloses the defend not guilty.

In the event that this motion be overruled then the defendant moves for a New Trial upon the grounds above set forth and upon the additional ground of errors of law occurring at the trial of the above cause and duly excepted to by the defendant.

That this motion in arrest of judgment or for a new trial is made in amendment of the original motion on file herein.

WILL G. BEARDSLEE,
Attorney for Defendant.

Received a true copy.

JOHN E. BELCHER
Assistant United States
Attorney

[Endorsed]: Filed June 6, 1947.

United States District Court, Western District
of Washington, Northern Division

No. 47196

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT M. DE LA LAMA,

Defendant.

JUDGMENT, SENTENCE, AND COMMITMENT
AND ORDER OF PROBATION

On this 6th day of June, 1947, the attorney for the Government and the defendant Robert M. De La Lama appeared in person, the defendant being represented by Will G. Beardslee and Lynn J. Gemmill, his attorneys, the Court finds the following:

That prior to entering his plea, a copy of the Indictment was given to the defendant; that the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty on Counts I, II, III, IV, V and VI of the Indictment; that by order of this Court pre-sentence investigation was made; now, therefore,

It is Adjudged that the defendant has been convicted by jury verdict of the offense of violations of Section 174, Title 21, U.S.C., as charged in Counts II, IV and VI of the Indictment, and of the offense of violation of Section 2553a, Title 26, U.S.C., as charged in Counts I, III and V of the

Indictment; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It is Adjudged that the defendant is guilty as charged in Counts I, II, III, IV, V and VI of the Indictment, and is convicted.

It is Ordered and Adjudged that on Count VI of the Indictment the defendant be committed to the custody of the Attorney General for the United States or his authorized representative for imprisonment in the United States Penitentiary, McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Three (3) Years and Seventy-Five (75) Days and pay a fine to the United States of America in the sum of One Dollar (\$1.00), to stand committed until said fine is paid; and

It Is Further Ordered and Adjudged that on each of Counts I, II, III and V of the Indictment the defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in the United States Penitentiary, McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of One (1) Day and pay a fine to the United States of America in the sum of One Dollar (\$1.00), to stand committed until said fine is paid, the execution of

the confinement part of sentence imposed on Counts I, II, III and V to be concurrent with and not consecutive to the sentence imposed on Count VI of the Indictment; and

It is further Ordered and Adjudged that on Count IV of the Indictment the defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in the United States Penitentiary, McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Eighteen (18) Months and pay a fine to the United States of America in the sum of One Dollar (\$1,00), to stand committed until said fine is paid, the execution of the imprisonment part of sentence imposed on Count IV to be consecutive to and not concurrent with the sentence imposed on Count VI of the Indictment.

Provided, However, that the execution of sentence as to imprisonment Only on Count IV of the Indictment be and it is hereby Suspended and said defendant placed on probation as provided by law, for a period of Five (5) Years, commencing upon the completion of execution of sentence imposed on Count VI herein, during good behavior, in accordance with the terms and conditions of the laws of the United States relating to probation, upon the condition that said defendant does not break any law of the United States or of any state or com-

munity where he may be, and that during such period he shall report regularly to the United States Probation Officer at the times and in the manner said Officer shall direct, and shall abide by all the rules and regulations of probation and upon the express condition that said defendant does not unlawfully use or handle narcotics in any form.

It Is Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence, Commitment, and Order of Probation to the United States Marshal or other qualified officer, and that a copy serve as the commitment of the defendant.

Done in Open Court this 6th day of June, 1947.

JOHN C. BOWEN,

United States District Judge.

Presented by:

JOHN E. BELCHER,

Assistant United States

Attorney.

[Endorsed]: Filed June 6, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS

Robert M. De La Lama, in custody of U. S. Marshal, Seattle, Washington, Appellant.

Will G. Beardslee, 2307 Northern Life Tower, Seattle 1, Washington, Attorney for Appellant.

Offense: Violation of Section 174, Title 21, U.S.C., as charged in Counts II, IV and VI of the Indictment—knowingly receiving and concealing opium prepared for smoking which had been imported into the United States contrary to law; violation of Section 2553a, Title 26, U.S.C. as charged in Counts I, III and V of the Indictment; knowingly purchasing opium prepared for smoking which was not then in nor from the original stamped packages.

Date of Sentence: June 6, 1947.

Judgment, Sentence and Order of Probation: Adjudged that Defendant is guilty on all six counts of the Indictment in accordance with the verdict of the jury. As to Count VI the defendant is committed to custody of Attorney General of United States for imprisonment in the United States Penitentiary at McNeil Island, Washington, for a period of three years and 75 days and a fine of \$1.

As to Counts I, II, III and V of the Indictment the Defendant is committed for imprisonment in the United States Penitentiary, McNeil Island,

Washington, for a period of one day and pay a fine of \$1, sentence to run concurrently with sentence imposed on Count VI.

As to Count IV of the Indictment the Defendant is committed for imprisonment in the United States Penitentiary, McNeil Island, Washington, for a period of eighteen months and pay a fine in the sum of \$1, sentence to be consecutive with sentence on Count VI and the same suspended and defendant placed on probation for a period of five years.

Defendant is now confined in the King County Jail at Seattle, Washington.

Judgment, sentence and order of probation is dated June 6, 1947.

The above named Defendant, Robert M. De La Lama, does hereby appeal from the judgment, sentence, commitment and order of probation dated June 6, 1947, adjudging Defendant to be guilty on all six counts of the Indictment and the sentences imposed as contained therein, and from each and every part thereof to the Circuit Court of Appeals for the Ninth Circuit.

Dated this 13th day of June, 1947.

ROBERT M. DE LA LAMA,
By WILL G. BEARDSLEE,
His Attorney.

Received a copy of the within Notice this 13th day of June, 1947.

J. CHARLES DENNIS, (GM)
Attorney for Plaintiff.

[Endorsed]: Filed June 13, 1947.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Comes now the above named defendant by his attorney, Will G. Beardslee, and herewith furnishes a statement of points to be relied upon on appeal:

1. That the Court erred in admitting, over objection of the defendant, testimony of Hugh Olivey, a Government witness, to the effect that the witness and a Mr. Van Treel purchased opium from the defendant on the night of June 29, 1946, at Phoenix, Arizona, approximately three months subsequent to the date of the offenses with which the defendant was charged and being tried upon; said subsequent alleged offense being not charged against the defendant in the indictment; that said testimony and evidence was highly prejudicial to the defendant and not legally admissible.

2. That the Court erred in failing to dismiss the action and instruct a verdict of "not guilty" at the close of the Government's case upon motion made by the defendant.

3. That the Court erred in refusing to grant defendant's motion in Arrest of Judgment and in the alternative for a new trial.

4. That the evidence was insufficient to support the verdict of guilt.

5. That the evidence of the Government witness, Lucien Vasques, affirmatively demonstrated the innocence of the defendant as to all counts of the indictment.

6. That the presumptions of unlawful purchase as alleged in Counts I, III and V of the Indictment and the presumptions of unlawful importation into the United States of opium prepared for smoking as alleged in Counts II, IV and VI of the Indictment were wholly overcome and successfully rebutted by the affirmative testimony in the case.

WILL G. BEARDSLEE,
Attorney for Defendant.

Copy received 7/3/47.

ALLAN POMEROY,
Assistant U. S. Attorney.

[Endorsed]: Filed July 3, 1947.

[Title of District Court and Cause.]

STIPULATION AS TO RECORD ON APPEAL

It is stipulated and agreed by and between J. Charles Dennis, United States Attorney, representing the plaintiff in the above cause, and Will G. Beardslee, attorney for the above named defendant, that the following designated parts of the record, proceedings and evidence in the above cause is sufficient for the purpose of considering all points to be raised by the defendant on appeal to the Circuit Court of Appeals as appears from the statement of points on appeal served and filed by the defendant and that the Clerk of the above Court

may transmit to the Appellate Court true copies of the matters designated by respective counsel herein, to wit:

1. The Indictment.
2. Verdict.
3. Amended motion in Arrest of Judgment or in the alternative for a new trial.
4. Judgment, sentence and commitment and Order of probation.
5. Notice of Appeal.
6. All of the testimony of all of the witnesses for the Government and the defendant.

J. CHARLES DENNIS,
United States Attorney.

By /s/ ALLAN POMEROY,
Assistant United States
Attorney.

/s/ WILL G. BEARDSLEE,
Attorney for Defendant.

[Endorsed]: Filed July 3, 1947.

[Title of District Court and Cause.]

MOTION

Comes now the defendant by his attorney, Will G. Beardslee, and moves the Court for an order extending the time for filing and docketing of the record on appeal in the above cause.

This motion is based upon the affidavit of Will G. Beardslee hereto attached.

WILL G. BEARDSLEE,
Attorney for Defendant.

State of Washington,
County of King—ss.

Will G. Beardslee, being first duly sworn, states: That he is the attorney of record for the defendant above named; that Notice of Appeal was filed on June 13, 1947; that although a part of the testimony has been transcribed and filed, the same is not complete; that the Court reporter, who reported the case, is on vacation and it appears for that reason that the transcript cannot be completed so that the entire record on appeal can be filed by July 23, 1947, which would be forty days from the filing of the Notice of Appeal; that affiant believes that time for filing said record on appeal should be extended thirty days beyond the time allowed by the Rules of Criminal Procedure, that is, to August 23, 1947.

WILL G. BEARDSLEE.

Subscribed and Sworn to before me this 9th day of July, 1947.

[Seal] MILDRED S. BEARDSLEE,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed July 12, 1947.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL

This matter coming on for hearing before the court on the application of the defendant, Robert M. De La Lama, for an extension of time in which to file the record on appeal with the Clerk of the Circuit Court of Appeals for the Ninth Circuit and it appearing to the Court that said extension should be granted,

It Is Ordered, that the defendant is hereby granted an extension of time to and including the 23rd day of August, 1947, in which to file the record on appeal with the Clerk of the Circuit Court of Appeals for the Ninth Circuit on the appeal from the judgment and sentence in the above cause.

Done in Open Court this 12th day of July, 1947.

/s/ JOHN C. BOWEN,
Judge.

Approved:

J. CHARLES DENNIS,
United States Attorney.

By JOHN E. BELCHER,
Assistant United States
Attorney.

Presented by:

LYNN J. GEMMILL,
Attorney for Defendant.

[Endorsed]: Filed July 12, 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America

Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered 1 to 15, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as it required by designation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, together with the Reporter's Transcript of Proceedings, the original of which is sent up as a part of this record, constitute the record on appeal from the judgment of said United States District Court for the Western District of Washington dated June 6, 1947.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparing the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

10 pages at 40c.....	\$4.00
4 pages at 10c (copies furnished).....	.40
Notice of Appeal.....	5.00
Total	<hr/> \$9.40

I hereby certify that the above amount has been paid to me by counsel for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 31st day of July, 1947.

[Seal] MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 47196

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT M. DE LA LAMA,
Defendant.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

Seattle, Washington, Tuesday, May 20, 1947
9:30 A.M.

Before: Honorable John C. Bowen,
District Judge.

Appearances:

Mr. Allan Pomeroy, Assistant United States
Attorney, appearing for Plaintiff.

Mr. Will G. Beardslee, appearing for Defendant.

Whereupon, evidence was given and proceedings were had as follows, to-wit:

(A jury was duly impaneled and sworn to try the cause, after which the jury was admonished by the Court and excused until 1:45 o'clock p.m.)

The Court: Was there something, Mr. Beardslee, you wish to speak of now?

Mr. Beardslee: Yes. At this time I would like to present a petition for the issuance of a writ of habeas corpus ad testacandum, and also an order for the issuance of the writ. The petition I verified as of last Saturday, I believe.

(Discussion between Court and counsel.)

Mr. Pomeroy: I haven't seen this form. It hasn't been presented to us. I don't know that that is necessary, however.

The Court: I interpret it as an *exparte* proceeding.

Mr. Beardslee: Yes, your Honor.

Mr. Pomeroy: The original file in this case will show that a writ has already been signed by the Court for the production of Lucian A. Vasquez at this trial, and that the Court is now informed in open court that Lucian Vasquez is now in attendance at this court house. Therefore, this writ is unnecessary and has no bearing upon his being present, because he will be called and has been ordered here already by competent authority.

(Further discussion.)

(Lucian A. Vasquez was brought before the Court.)

The Court: Is the witness Vasquez now in the presence of the Court?

Mr. Pomeroy: Yes, your Honor.

The Court: It is the order of the Court that the Marshal keep this witness in attendance during all sessions of the court in the case of United States of America, plaintiff, against Robert M. De La Lama, defendant, unless and until the Court otherwise orders in respect to him.

Mr. Pomeroy: May I have that order read?

(Order read by the reporter.)

The Court: Doesn't that cover the situation without anything further from your petition?

Mr. Beardsley: Yes, your Honor, except this: I would like to have the witness sworn in and ask him a couple of questions as to whether he desires to confer with me. The officers have indicated they would like to be present when the questions were asked.

The Court: Do you think that is necessary? Don't you think you could tend to that out of the presence of the Court, Mr. Beardslee?

Mr. Beardslee: Yes, that probably could be done.

The Court: And then if later you find you can't, I will consider any further application you wish to make.

The Court has given Mr. Beardslee the permission, and does now give him permission, to interview this witness.

Mr. Pomeroy: You are not ordering the witness to speak though, are you?

The Court: I am not ordering the witness to do anything. I am giving Mr. Beardslee the privilege of conferring with this witness while he is in the Marshal's custody at any time convenient to the Marshal. And anyone interested in the government's side of the case can be present if they wish.

You are excused until 2 o'clock. All those connected with the case are excused until 2 o'clock this afternoon.

(Whereupon, at 12 o'clock noon an adjournment was taken until 2 o'clock p.m., at which time, all parties being present as before, the proceedings were resumed as follows:)

Afternoon Session

The Court: May the record show a call of the jury waived, and that all the jurors are present and also all parties and their counsel?

Mr. Beardslee: Yes, your Honor.

Mr. Pomeroy: Yes, your Honor.

The Court: Let the record show that.

At this time we will hear the Government's opening statement of what it thinks the proof will be in this case. * * *

Mr. Pomeroy: * * * Lucian Vasquez then told the story, and Robert De La Lama also told the story, that this opium was all owned by Lucian Vasquez, so this very same wording that you read in this indictment was a charge which was made

against Lucian Vasquez. And Vasquez stated at that time that Robert De La Lama, the defendant here before the Court, had nothing whatever to do with this; that he had come along merely for the ride. He had been in the service and he was coming up to visit a brother in Tacoma. And that Vasquez, when he was bringing these narcotics from Arizona up into our country up in here, had merely brought De La Lama along for a ride up to see his brother in Tacoma, and that De La Lama knew nothing about the fact that there were narcotics in the automobile or that Vasquez had any with him.

At that time De La Lama was released and Lucian Vasquez came into court upon this charge being made and posted bond, and then Lucian Vasquez and De La Lama both then went back to Phoenix, Arizona, while Vasquez was out on bond.

* * * * *

At that time and in this same conversation the defendant De La Lama defended Vasquez to these two officers and stated that Vasquez was a mighty fine fellow and that he was his friend. In fact, Vasquez was going back up and plead guilty to this charge that had been placed against him in Seattle and was going to take the rap for De La Lama. That actually these narcotics that were in Vasquez' automobile belonged to De La Lama, and that he went along to protect his investment and also the money that he was to receive, and that Vasquez was going to take the rap for him and he was going to take care of Vasquez for doing that. * * * And at the present time he (Vasquez) will testify that

those are the facts, that he actually did come up here and his job was to bring those narcotics up here for De La Lama, and that De La Lama did come along to protect his investment.

* * * So this case revolves around the fact that the narcotics which were found in the automobile when De La Lama was in it, although the car did not belong to him, were actually De La Lama's narcotics. And when all the evidence is in I am sure that beyond a reasonable doubt you will find that this defendant is guilty of all six of these counts.

The Court: I will hear the defendant's opening statement at this time or later as he may elect.

Mr. Beardsley: I prefer reserving it, if your Honor please.

The Court: The plaintiff may call its first witness.

Mr. Pomeroy: Lucian Vasquez.

LUCIAN A. VASQUEZ

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Please state your name to the Court.

A. Lucian A. Vasquez.

Q. And you were previously sentenced by this court, is that correct? A. Yes.

(Testimony of Lucian A. Vasquez.)

Q. And you are now serving a sentence of three and a half years in McNeil Island penitentiary?

A. Yes.

Q. And you were charged with the possession of opium prepared for smoking? A. Yes.

Q. Now, Mr. De La Lama, you had an automobile with you at the time of your arrest, is that correct—Mr. Vasquez?

A. Mr. Pomeroy, before I answer your question I'd like to address the Court, please.

Mr. Beardslee: I didn't hear that.

The Court: He would like to address the Court, please. You may do that.

The Witness: I would like to know the difference between when one is under oath and when he isn't.

The Court: Will counsel for the government instruct or advise the witness on that question?

Mr. Pomeroy: You are under oath when you have taken the oath in a court of record such as this, and when you were just given the oath by the clerk of the court. You are now under oath.

The Court: And when you promised under a sworn penalty to tell the truth and nothing but the truth, so help you God.

The Witness: Well, I have something to tell the Court. I wish that I would be granted permission to tell everything.

The Court: I think you had better proceed to answer the questions.

(Testimony of Lucian A. Vasquez.)

Q. (By Mr. Pomeroy): Was it pertaining to this cause that you wanted to tell——

A. Yes, I'd like to state the truth to the case.

The Court: The reason you are called to testify is to ask you questions concerning this case. Proceed.

Q. (By Mr. Pomeroy): At the time of your arrest, Mr. Vasquez, how many jars of opium did you have in your possession?

A. Well, I don't wish to answer.

Q. Well, did you have it on your person, that is what I mean? How many jars, if any, did you have on your person at the time of your arrest?

A. I do not wish to answer.

Mr. Beardslee: That presupposes, if your Honor please, that he had any in his possession.

Q. (By Mr. Pomeroy): Did you have any opium on your person when you were first arrested in March of 1946?

A. I do not wish to answer.

Mr. Pomeroy: May the jury be excused, if the Court please?

The Court: The jury will temporarily retire.

(Jury retires from court room.)

Mr. Pomeroy: If the Court please, the witness has asked if he might ask some questions of the Court. I do not unnecessarily wish to pillory the witness. Yesterday I discussed this case with him and he answered, as he told me, truthfully, the questions placed to him. It may be that there may be something in his mind now concerning this that he wishes to ask the Court which perhaps was not proper to

(Testimony of Lucian A. Vasquez.)

be done in front of the jury, and I would ask the Court to ask whatever he may have on his mind at this time.

The Court: The Court is not counsel for the witness, and if he wishes to accept the advice of either counsel present he may do that. I have to pass upon the questions and answers that may be made or objections that may be made to it, and there is nothing before the Court yet. You may proceed. I don't see any use of anything being before the Court.

Mr. Pomeroy: May I ask him what is the question he desires to ask?

The Court: You may.

Q. (By Mr. Pomeroy): What is the question?

A. I want to tell the Court the 'underhanded methods that the agents are using in order to convict a man, and I know everything about the case and I am put up here under oath and I would like to tell everything I know about the case and if I can't, I would like to have Mr. Beardslee use me as his witness.

Mr. Pomeroy: Well, in that event——

Mr. Beardslee: This request comes as a surprise to me, your Honor, because the witness would not discuss the matter with me. But I will say at this time that I certainly would love to be appointed by the Court to represent the witness so that we might have the matter aired that the witness now desires to testify to. I can readily understand now why he would like to know if he is under oath.

(Testimony of Lucian A. Vasquez.)

The Court: I don't see how any man with ordinary common sense would not know. He just took the oath.

(Further discussion by Mr. Beardslee.)

The Court: Anything you wish to ask him?

Mr. Pomeroy: Nothing further. I might say that I am going to ask questions and if they are not answered as I understand the answers to be, I am completely surprised and will ask permission to cross-examine this witness.

The Court: Anything else before bringing in the jury?

Mr. Beardslee: No, except I will suggest this to your Honor now: I will object to any effort made to cross-examine the witness from here on out. Counsel has now been notified in the absence of the jury as to what the witness intends to testify to. He cannot from here on claim surprise. If that came as a surprise before the jury that would be entirely different. But——

The Court: Does either of you have any authorities on that question?

Mr. Beardslee: I don't have any authorities with me, your Honor, but I had occasion to brief the question some time ago. That was an instance where—well, it pertained to an alleged robbery in town here. A witness had stated to Mr. McKinney, then assistant United States attorney, that he was hired to perform this robbery pertaining to government property. That prior to the trial the witness changed his mind and he gave a statement in front of a dep-

(Testimony of Lucian A. Vasquez.)

uty sheriff and a court reporter, under my questioning, which was entirely different than what he had told the assistant United States attorney. I presented that statement to the assistant on the morning of trial. I had briefed the question, and I believe I still have the old brief in my office. This has been quite some few years ago. If I do, I believe I can demonstrate this in short order.

But the only time you can impeach your own witness is when you can only claim surprise; when there is no longer any surprise as to what the witness will testify to, then he can't resort to cross-examination or impeachment of his own witness.

Mr. Pomeroy: Well, if the Court please, we have briefed it a number of times. I don't know that he is not going to answer the same as yesterday, but if he doesn't, then I will plead surprise because it will be of great surprise to me if he changes his story since yesterday afternoon.

He has not answered yet. The only thing I have heard so far in the testimony outside of the province of the jury is the fact he desires to say something concerning the conduct of certain officers. I am not going to ask him about that. That isn't what I am going to inquire about. I am going to inquire into the actual transaction. And if it isn't answered, which I suspect now is what will happen—I suspicion, I don't know—then I will be surprised.

The Court: Bring in the jury.

(Jury returns to jury box.)

(Testimony of Lucian A. Vasquez.)

The Court: Let the record show all the jurors have returned to their places as before. You may proceed.

Q. (By Mr. Pomeroy): Mr. Vasquez, the narcotics which you pleaded guilty to having in your possession when you were sentenced in this court having been found on you in Seattle, where did you get those? In what state?

Mr. Beardslee: If your Honor please, I object to that as decidedly immaterial in this case.

The Court: Overruled.

Mr. Beardslee: What he had in that case is over. He has pleaded guilty and been sentenced. It has nothing to do with this case.

The Court: What is the purpose of it?

Mr. Pomeroy: The purpose is to show that Mr. De La Lama was with Mr. Vasquez all the time he had these narcotics in the car and coming from Arizona.

The Court: The objection is sustained.

Mr. Pomeroy: Well, if the Court please, I am bringing out here that this man was in an automobile with certain narcotics and the defendant here was in the car with him.

The Court: Well, you will have to ask him where he was such and such a time, who was there, what was there, and so on.

Mr. Pomeroy: The question was, "Where did you bring the narcotics from, what state to Seattle?" That was the only question I had asked him.

(Testimony of Lucian A. Vasquez.)

Mr. Beardslee: This witness hasn't admitted so far that he brought any narcotics into the state.

The Court: The objection is sustained to the question in the form it is now put.

Q. (By Mr. Pomeroy): Mr. Vasquez, you did have about 15 jars of opium on you when you were arrested in Seattle, is that correct? A. Yes.

Q. And where did you bring those narcotics to Seattle from? A. Phoenix, Arizona.

Q. And what car did you bring them up in?

A. My own.

Q. And what kind of a car was it?

A. It was a 1940 convertible Oldsmobile.

Q. Did you travel alone or with someone when you came from Phoenix to Seattle?

A. I traveled with the defendant.

Q. You traveled with Mr. De La Lama?

A. Yes.

Q. And was he with you in Seattle when you were arrested? A. Yes.

Q. And in these 15 jars what kind of opium was it? A. Smoking opium.

Q. And besides these 15 jars did you have another type of opium with you?

A. I had a little bottle of liquid.

Q. A bottle of opium in liquid form, is that correct? A. Yes.

Q. And actually whose narcotics were those, yours or the defendant, Mr. De La Lama's?

A. They belonged to me.

(Testimony of Lucian A. Vasquez.)

Mr. Pomeroy: Well now I will plead surprise, if the Court please, and ask to cross-examine this witness.

Mr. Beardslee: I object to counsel's cross examination.

The Court: What is the basis of the surprise?

Mr. Pomeroy: Because I wish to state that yesterday he told me the narcotics belonged to Mr. De La Lama.

The Court: The objection is overruled. You may inquire.

Q. (By Mr. Pomeroy): Mr. Vasquez, did you have a conversation with me yesterday afternoon?

A. I did.

Q. And where did that conversation take place?

A. In your office.

Q. And who was present at that conversation?

A. Lieutenant Belland, and some other narcotic agent and yourself.

Q. Was it—stand up—Mr. Giordano?

A. Yes.

Q. And will you stand up—was it Mr. Belland?

A. Yes.

Q. And it was in my office, is that correct?

A. Yes.

Q. And did I ask you these same questions yesterday afternoon, approximately the same questions? A. Yes.

Q. What did you tell me yesterday afternoon as to the ownership of that opium?

A. Well, do you want me to tell the Court why I made the statement?

(Testimony of Lucian A. Vasquez.)

Q. Tell me what you told me yesterday afternoon concerning the ownership of that opium.

A. I told you they belonged to Robert De La Lama.

Q. And didn't I ask you yesterday afternoon why it was that you were telling me yesterday that it belonged to Robert De La Lama, when you were arrested, that you said it was yours?

A. Yes.

Q. And what did you say to me?

A. What did I say to you?

Q. Yes, what was your answer when I asked you why it was that your story now was the narcotics belonged to De La Lama when at the time of your arrest you stated it was yours, and what was your answer to that question?

Mr. Beardslee: Objected to as argument, and it isn't a direct question.

The Court: Overruled.

Mr. Beardslee: It is argument. Well——

A. Well, Mr. Pomeroy, I can't answer that because those questions were put direct to me the way you wanted them. That is why I answered them that way. Not because I had the intention of answering them that way in court.

Q. In other words, you were talking to me yesterday, then, on the grounds that you were just answering questions and you weren't in court. Is that your statement now? A. Yes.

Q. What was your statement yesterday as to why you told me that the narcotics belonged to De

(Testimony of Lucian A. Vasquez.)

La Lama when I asked you why you changed your story? What did you give me as your reason?

A. Well, I was made different kinds of promises in order to say that.

Q. What did you tell me? That is my question. What did you tell me as to your reason?

A. I told you whatever you wanted me to say in order to satisfy you, I did.

Q. Did I ask you to make the statements that you made?

A. Well, you read out a statement to me pertaining to the same case from Earnest Collins stating that he heard Robert De La Lama——

Mr. Beardslee: Your Honor, I am going to have to object to any hearsay being injected into this case.

The Court: That will be sustained.

Q. (By Mr. Pomeroy): Did you or did you not tell me that De La Lama had promised to take care of you after you pleaded guilty and that you hadn't been taken care of and that you wanted now to tell the truth?

A. Yes, I did.

Q. Did you tell me that yesterday?

A. I did, because you wanted me to.

Q. Did I ask you to tell me that?

A. Well, more or less.

Mr. Beardslee: I submit it has been answered.

The Court: The objection is overruled.

Q. (By Mr. Pomeroy): As a matter of fact, didn't I tell you that I wanted you to tell the truth?

A. Yes.

(Testimony of Lucian A. Vasquez.)

Q. And you told me that you were telling the truth now and you wanted to take the stand and tell the truth? A. Not in there I didn't.

Q. Didn't you tell me that you wanted to take the stand and tell the truth?

A. Yes, that is right. That is why I took the stand, to tell the truth.

Q. And you told me yesterday that you were telling me the truth, didn't you?

A. But I wasn't.

Q. In other words, you weren't telling me the truth yesterday? A. No.

Q. But you did state to me yesterday that Mr. De La Lama had gone up to Mr. Beardslee's office and made arrangements for you so you could come up and plead guilty, is that correct?

A. Well, I merely went by what the statement that you read to me and——

Q. (Interrupting): No, but didn't you tell me that? A. Yes, I did.

Q. And didn't you tell me that you had been told that you would get—that you then went up to see Mr. Beardslee and that you had made arrangements to pay a certain amount of the fee and that you would get either a sentence to a narcotics health farm or a year and a day in the pen? Didn't you tell me that?

A. Well, I did, but Mr. Beardslee can verify them statements.

Q. Didn't you tell me that yesterday?

A. Yes.

(Testimony of Lucian A. Vasquez.)

Q. And that then when you came into court and got three and a half years in the penitentiary that you had been let down? Isn't that what you told me yesterday? A. Yes.

Q. Are you now stating that what you told me yesterday in all those statements was not true?

A. Yes.

Q. All right. Now you tell what the truth is then? A. Well, last Thursday——

Q. (Interrupting): Tell what the truth is concerning your pleading guilty and being sentenced.

Mr. Beardslee: That question is very general and counsel has opened a wide field of cross-examination for me.

Mr. Pomeroy: Well, I don't care.

Mr. Beardslee: I think the Court will insist the witness be permitted to answer your question.

The Court: Let him answer your question. Try to be as direct in your answer as possible.

Mr. Pomeroy: You may answer anything you want, Mr. Vasquez. Just tell your story now.

A. Well, last Thursday I had a visit at McNeil Island from Mr. Belland and some other federal officers.

The Court: You don't speak the name very distinctly. What was the name of the man who visited you last Thursday? A. Mr. Belland.

The Court: Belland?

A. Bellen, and some other officer, federal officer.

The Court: Do you know the other man's name?

(Testimony of Lucian A. Vasquez.)

A. No, I don't. They were down there and asked me if I wanted to come down here and testify against the defendant because they also told me that they had enough evidence in order to get a conviction and all that, and they needed my help. And in the meantime I asked them what was in it for me, and they told me that I could be recommended for parole and make parole, which at the time I knew that any recommendations from Mr. Pomeroy or any of them would not have any affect on me when I went up for parole, because the Parole Board does not give out paroles to anybody that has been convicted of a narcotics charge.

So I told them I would come down here. I wanted to get a little more information on it. Yesterday afternoon I was brought over from the institution direct to Mr. Pomeroy's office, which I was in there again. Again I was made promises about parole and all that, which I knew that they wouldn't go through with their part of it and I didn't see any sense with going through with my part of it, either. They was playing a game with me and so was I with them, I knowing all the time that the stuff belonged to me; I pleaded guilty and Bob was innocent, didn't know anything about it at the time. It was my responsibility to get him out as easy as I could at the time we was both arrested.

During that time when we was arrested Mr. Beland, the narcotics officer, they had us in there questioning us most of the time, and I told them I made statements to that effect, which eliminated Bob of all charges.

(Testimony of Lucian A. Vasquez.)

And they only had two jars of smoking opium at the time. They didn't know where the rest of the stuff was. So I made a proposition with them. I told them if they released Bob of all charge which he was innocent, I would turn over the rest of the stuff, which I told them I had hid out in the hills.

One of the agents came over and shook hands with me and told me his word was his bond, and all that, and I told him, "If you turn Bob loose I will turn the rest of the stuff over," which the rest of the stuff was in the automobile at the time only they couldn't find it.

From then on, well Mr. Beardslee knows, he handled the case for me, he knows all about the rest. Mr. Beardslee knows that I paid him off myself at the time that I hired him for my attorney. There was nothing whatever in my statements about Bob paying off or anything like that.

I felt it was my responsibility to get him off because I had gotten him into it. I took the blame for it, it was mine, and I told the Court I was persecuted most of the time all during the time I was out on bond and made promises and all that, even Joe Belland, when I was in court here, used false statements on me in order to get me as much time as possible because I wouldn't cooperate with him.

I knew all the time that any recommendations they could give or anything like that would not do me any good, so the only thing I could do was to come back at them with the same thing.

(Testimony of Lucian A. Vasquez.)

Q. (By Mr. Pomeroy): Did I make you any promises yesterday about parole?

Mr. Beardslee: Mr. Pomeroy is not on trial, if your Honor please.

The Court: Overruled.

Mr. Beardslee: The witness has said the other people made the promises.

The Court: He made the statements, which in my opinion made this question a proper—

Mr. Beardslee: Yes, your Honor.

Mr. Pomeroy: Read the question.

(Question read by the reporter.)

A. No. You was out of the room.

Q. I made no promises whatever, isn't that correct? A. That is right.

Q. I asked you to tell the truth, isn't that correct? A. Yes.

Q. When you were out on bond with Mr. De La Lama, I mean after you were released up here, where did you go? A. Phoenix, Arizona.

Q. With whom did you go to Phoenix?

A. By myself.

Q. By yourself. Did you see Robert De La Lama in Phoenix? A. Yes.

Q. When you left Phoenix how did you travel from Phoenix to Seattle to come back here to be sentenced? A. By plane.

Q. Did you have any narcotics in your possession when you came back from Phoenix?

A. Yes.

(Testimony of Lucian A. Vasquez.)

Q. Who gave you those narcotics?

A. I bought them myself.

Q. From whom?

Mr. Beardslee: Objected to as immaterial. That isn't the case that is on trial here at all.

Mr. Pomeroy: Mr. De La Lama—

The Court: Overruled.

Q. Did Mr. De La Lama give you those narcotics? A. No, he didn't.

Q. Did you buy them from him?

A. No. I was addicted to narcotics and I bought them off a Chinaman in Chinatown in Phoenix, Arizona.

Q. Is Mr. De La Lama addicted to narcotics, also? A. No, not to my knowledge.

Q. You don't know that he has ever used any?

A. No, I don't.

Mr. Pomeroy: You may cross-examine.

Cross-Examination

By Mr. Beardslee:

Q. It was indicated to you, was it not, Mr. Vasquez, prior to entering your plea of guilty that there was a good chance of your becoming hospitalized?

A. Yes.

Q. And that was urged and presented to the Court at the time of your sentence, wasn't it?

A. Yes.

Q. That you be hospitalized in order to effect a cure from your unfortunate addiction?

A. Yes.

(Testimony of Lucian A. Vasquez.)

Q. And the Court made a comment at that time, didn't he, that it was because of the quantity of opium that your sentence in this matter would be quite severe? A. Yes.

Q. Mr. Belland, you say he misled the Court, he made some statements in court that were not true. Do you mind telling us what those statements were, or would you prefer not?

A. I believe he had reference to me having several prior convictions in assault with a deadly weapon, which I have never been convicted on that before. It was just a matter when I was a juvenile, 15 or 16 years of age at the time.

Q. You were, after being arrested, a pretty sick boy, were you not? A. Yes, I were.

Q. And that illness was caused by reason of the fact that you, while in jail, could not obtain narcotics to keep you going, is that right?

A. That is right.

Q. And isn't it also true that you were even refused a tapering-off cure? A. Yes.

Q. And didn't you on various occasions appeal to me to see some doctor, a physician or surgeon of my own or anyone that would administer it to you because of your condition? A. Yes.

Q. And did I not have you in open court and ask the Court for permission to have either a government or a county physician prescribe narcotics for you, enough to alleviate your suffering at that time?

A. Yes.

Q. In spite of the pain and suffering that you

(Testimony of Lucian A. Vasquez.)

were going through while in jail, you still assumed the responsibility of owning that opium, isn't that true? A. Yes.

Q. You would have given up just about anything you ever owned, would you not, to have gotten out of jail where you could obtain narcotics on your own if that opportunity had been presented?

A. Just about anything.

Q. Were you not at that time strongly tempted to say that it was De La Lama's opium?

A. Very near.

Q. And were you not advised by federal narcotics agents that you were going to stay there and suffer until you told them the truth of everything?

A. Yes.

Q. They would see to it that you would not obtain any relief or medical treatment?

A. Yes.

Q. Did a doctor ever come to see you all the time you were in jail here? A. No.

Q. And did you frequently request that a doctor see you? A. I did.

Q. Were you ever present when I made a request to the jailer that the doctor be called to see you and prescribe for you? A. I was.

Q. Do you remember how long you were in jail before you were able to obtain bail?

A. Four or five days.

Q. And do you remember how long they held De La Lama before they let him go?

(Testimony of Lucian A. Vasquez.)

A. We was arrested on a Saturday afternoon. I think they released him on a Monday night. I am not quite sure.

Q. Counsel, in his opening statement, told the jury that the officers had not searched the car at the time you told them where the main bulk of the opium was. Is that true or untrue?

A. I think they went over the car pretty thoroughly.

Q. Well, isn't it a fact they told you they had gone over the car? That is about the time you told them you had it cached up in the hills some place?

A. Yes.

Q. Incidentally, was that car of your confiscated by the government? A. It was.

Q. Did De La Lama or any member of the police department or federal narcotics squad know where that opium was until you voluntarily disclosed it?

A. No, I don't believe anybody did.

Q. I am particularly interested in whether De La Lama knew.

A. No, he couldn't have known.

Q. This, as I understand, was in some secret compartment of your car?

A. Well, it wasn't really a secret compartment. It was a tool chest that the Oldsmobile people made in the trunk of the automobile. I just happened to run into it.

Q. I see. Did you ever have occasion, or did you ever open that compartment at any time in the presence of De La Lama? A. Never.

(Testimony of Lucian A. Vasquez.)

Q. Would De La Lama have an opportunity of knowing where it was any more than the agents for the narcotics squad or the police department would have prior to the time you disclosed its whereabouts? A. He would not.

Q. To your knowledge De La Lama—or as far as you know, let's put it that way, De La Lama has never used narcotics in any form or fashion?

A. Not to my knowledge.

Q. He did not even know that you were an addict until after you were in jail, did he, here in Seattle?

A. Yes, I kept it from him until the day of my arrest.

Q. And then you told him?

A. Well, I couldn't help it then because I was addicted to it and I tried to get that little bottle of medicine which I was using at the time.

Q. Counsel asked you a question about you and De La Lama being in my office and that De La Lama agreed to take care of you and pay my fee. Has De La Lama ever in his life been in my office that you know of? A. Not that I know of.

Q. Counsel also implied to the jury—didn't say so—that you and De La Lama then went back, I believe it was, to Phoenix after your release. Was De La Lama ever here in Seattle at the time you were released on bail?

A. No, he was in Phoenix, Arizona.

(Testimony of Lucian A. Vasquez.)

Q. Has he ever traveled with you at any time other than the occasion when he came with you in your car from Phoenix to Seattle?

A. Not that I remember of.

Q. Incidentally, did you have a personal knowledge of the fact that he did want to come over and see his brother?

A. Yes, I did. That is why I brought him over.

Q. And De La Lama, the defendant here, had been released from the Army shortly prior to the time that——

A. (Interrupting): Yes. He was just released and he was short on money. He had a little money but that was all, that he had saved during his stay in the Army. I volunteered to bring him here since I was making the trip.

Q. Do you know how long he had been in the service?

A. Oh, I don't know. Maybe 22 or 23 months. I am not quite sure.

Q. It was over two years, as a matter of fact, as far as you know?

A. Oh, yes.

Q. And he had been wounded, had he not?

A. Yes.

Q. That and the shortness of funds, wasn't that one of the reasons why you wanted to help him out by bringing him over here?

A. Yes.

Q. Now just how did they make these offers that if you would come up and testify in this case they would try to assist you in obtaining a parole? What did they say they would do for you?

(Testimony of Lucian A. Vasquez.)

A. Well, recommendations, and every little thing like that, and which I know, I found out that anything anybody can say after the case is out of their jurisdiction will not have any effect upon the Parole Board in Washington.

Q. How long have you been in the pen on McNeil Island now on this charge?

A. Ten months.

Q. You know for sure that your testimony that you are giving now is going to antagonize the officers who might make recommendations for you?

Mr. Pomeroy: I object to that as calling for a conclusion.

Mr. Beardslee: I think it shows the interest of the boy.

Mr. Pomeroy: "Are you sure the officers are going to be antagonized?" That is calling for a conclusion.

Mr. Beardslee: I will bet on that.

The Court: Overruled.

Q. (By Mr. Beardslee): You realize, don't you, that by reason of the testimony you are giving here that you may have to serve out practically all the rest of the three and a half years? In spite of that you still want to tell the truth and claim responsibility, do you?

A. Yes. I don't like to see an innocent man going to prison.

Q. This health farm, you were fully advised about that government institution where narcotic addicts are sometimes sent there for a cure, it might take a year or year and a half? I mean, what you

(Testimony of Lucian A. Vasquez.)

were anticipating or hoping for at the time you came up for sentence, that had all been explained to you, hadn't it? A. Yes.

Q. Are you over the habit now, Mr. Vasquez?

A. Yes.

Q. I presume—I don't know, I presume—you had some tapering off process at the Island, McNeil Island? A. No; none whatever.

Q. How long has it been since you have not used narcotics of any nature?

A. Well, I can't say; just the amount of time I have been in prison, I suppose.

Q. Well, practically since your arrest, is it not?

A. Yes.

Q. Your mind is now clear? A. Yes.

Q. Is your body healthy aside from some cancerous condition?

A. Well, I have always been troubled with this cancer operation that I have had. That is how I was addicted to narcotics.

Q. In the first instance? A. Yes.

Q. But aside from that you are healthy now in body and mind, are you?

A. Yes, I feel very good.

Q. This operation for cancer was on your throat?

A. Yes, my thyroid gland.

Q. And you had to be sent back East to some specialist? A. Yes.

Q. That was how long ago?

A. I am not quite sure. It is about three years ago.

(Testimony of Lincoln A. Vasquez.)

Q. And ever since that day until the time you were arrested on this case you were aware of Ross' address, is that correct? A. I was.

Q. When I say "arrested," for the purpose of the record I mean to say that. Did De La Lanza ever at any time tell you that he would take care of you in any way?

A. No, I don't see how he could.

Q. Wasn't it just about the opposite? Wouldn't you be concerned of his was worried about not helping him out when he first returned from service?

A. Yes.

Q. You know that I tried to see you yesterday to talk to you to ascertain what your testimony might be, didn't you? A. Yes.

Q. And you refused to talk to me, did you not?

A. Yes.

Q. Did I, in the presence of a Deputy U. S. Marshal again try to talk to you shortly after 12 o'clock, about 12:05 o'clock? A. Yes, did.

Q. And did you not refuse to talk to me then?

A. I did.

Q. Have you ever discussed this case with me?

A. No.

Q. Haven't you, as a matter of fact, steadfastly refused to discuss it with me or anyone else that might be connected with the defendant?

A. That is right.

Q. Did somebody ask you not to talk to me about this?

A. No, nobody did, but I thought it is best not to.

(Testimony of Laurence A. Vesques.)

Q. Did anyone intimidate you in any way or suggest that you should not talk to me?

A. Well, when I was taken to the county jail yesterday the officers took me over, said you was asking to see me. It was up to me whether I wanted to see you or not, and if I didn't, why they could tell the jailer I was allowed no visitors, which I figured that is what they wanted me to do, so I cooperated with them and told them I wouldn't see you, which I wanted in that way, too.

Q. Did anyone in your presence tell the jailer that I was not to be permitted to see you?

A. What is that again, please?

Q. Did anyone in your presence tell the jailer that I was not to be permitted to see you?

A. No.

Mr. Beardslee: Redirect examination.

Redirect Examination

By Mr. Pomeroy:

Q. What were you going to do with all this opium you brought up to Seattle?

Mr. Beardslee: Object to that, if your Honor please, as decidedly immaterial in this case. He denied that De La Lama had anything to do with it. He is asking what he intended to do with it. This man has been sentenced right here in this court.

The Court: What is the theory of admissibility?

Mr. Pomeroy: What he was going to do with this narcotic. He had De La Lama in that car with him, where they were going to go with it and what they were going to do with it.

(Testimony of Lucian A. Vasquez.)

Mr. Beardslee: That was all gone into and this lad was sentenced and the Court took that into consideration in the severe sentence that was imposed upon him.

Mr. Pomeroy: The very same narcotics in the other case are the subject of this case and they are to be gone into here as much as in that.

Mr. Beardslee: I think what De La Lama knew what they intended to do might be questioned; certainly not what this witness knew.

The Court: The objection is overruled.

Mr. Pomeroy: You may read the question.

(Question read by the reporter.)

Mr. Beardslee: That is the purpose of it directed to the witness, if your Honor please, not what De La Lama was going to do with it, or you and De La Lama or anything of that kind, but what he is going to do with it.

The Court: The objection is overruled.

Mr. Beardslee: Exception.

The Court: Allowed.

Q. (By Mr. Pomeroy): You may answer it.

A. I was going to deliver it.

Q. What was it specifically that Mr. Belland did that you objected to in court when you were sentenced? A. What was it?

Q. Yes. You stated to Mr. Beardslee that you objected to something that Mr. Belland did in court. What was it?

Mr. Beardslee: He testified Mr. Belland did not tell the truth. He lied about it.

Mr. Pomeroy: I am asking the witness.

(Testimony of Lucian A. Vasquez.)

A. Well, Mr. Belland stated that I had been convicted since 1939, I believe, I am not quite sure, the record will show—that I had several convictions on assault with a deadly weapon.

Q. Well, how many convictions have you had?

Mr. Beardslee: This, if your Honor please, is not redirect examination. It is cross-examination of his own witness and certainly counsel cannot claim surprise on that record, and I don't like to have the witness annoyed and embarrassed in matters that are not material to this case.

The Court: The objection is overruled.

Mr. Pomeroy: Read the question.

Mr. Beardslee: I would like an exception on the particular grounds of the objection as of not being redirect examination.

The Court: Allowed.

(Question read by the reporter.)

A. What kind of convictions?

Q. (By Mr. Pomeroy): Any kind.

Mr. Beardslee: Well now, if your Honor please, I object to that. He might have had convictions for speeding. They cannot show any conviction in this court as respecting credibility except that of felonies. Counsel says any kind of convictions.

Mr. Pomeroy: I disagree with that law, if the Court please.

The Court: The objection is overruled.

Mr. Pomeroy: You may read the question to him.

(Answer and question read by the reporter.)

(Testimony of Lucian A. Vasquez.)

Mr. Beardslee: I'd like an exception to the Court's ruling.

The Court: Allowed. Proceed. Answer the question. A. Several.

Q. Well, as a matter of fact, didn't Mr. Belland say in court that you had had a number of convictions and included in them an arrest of assault and robbery and assault and intent to murder, isn't that what Mr. Belland said in court to Judge Bowen?

A. He did not.

Q. You state in your own words what Mr. Belland said.

A. Mr. Bowen asked Mr. Belland what he knew about the case, and Mr. Belland came up and told the Judge that I had a pretty bad record and that I had several convictions with assault with a deadly weapon. Those were his exact words.

Q. Well, as a matter of fact, Mr. Vasquez, you have had a continual record ever since you were just a youth, isn't that correct? A. Yes.

Q. And that you have served a number of sentences, isn't that correct?

Mr. Beardslee: I might suggest again to your Honor that I am going to have to renew my objection. When a person puts a witness on the stand they vouch for the truth of that witness and they cannot thereafter harass them. That might be my privilege, but it isn't counsel's. This witness has wanted to tell the truth and he has. This questioning now has gone so far afield that it has nothing whatsoever to do with the trial of this case.

The Court: Overruled.

(Testimony of Lucian A. Vasquez.)

Mr. Pomeroy: You may read the question to him.

(Last question read by the reporter.)

A. Well, if you want to call it a number, I served one.

Q. Well, you served one recently for white slave traffic act violation, isn't that correct?

A. Yes.

Mr. Beardslee: I still want the objection to run to this line of questioning, and I want the Court to allow me an exception.

The Court: Allowed. The objection is overruled and exception allowed.

Q. (By Mr. Pomeroy): It was in 1937 that you were arrested for robbery and assault to murder, isn't that correct, but you weren't sentenced on that?

A. There was no case to it. That was just on suspicion.

Mr. Beardslee: Counsel knows he has no right to ask a witness about an arrest where there has been no conviction.

The Court: The objection is sustained and the jury will disregard that last question.

Mr. Pomeroy: This isn't the defendant, if the Court please.

The Court: The ruling will have to stand. The jury will disregard the last question and answer.

Q. You claimed you needed a tapering-off cure, is that correct, when you were arrested here last March?

A. I did.

(Testimony of Lucian A. Vasquez.)

Q. And who refused you this tapering-off cure?

A. Well, everyone did so far.

Q. You said you were refused a tapering-off cure. Who is it that refused you this tapering-off cure?

A. Doctors and everyone.

Q. What doctors?

A. Well, I don't know.

Q. Where did you see the doctors?

A. I was supposed to see him in the county jail.

Q. Well, who refused you this tapering-off cure that you thought you needed?

A. Well, I don't know who refused it.

Q. You actually weren't refused any cure, isn't that a fact?

A. Well, I don't know.

Q. Why were you strongly tempted to say it was De La Lama's narcotics?

A. What do you mean, why?

Q. Well, didn't Mr. Beardslee lead you along in the questioning to where you said you were strongly tempted——

Mr. Beardslee: I was cross-examining a witness. That is not leading. And I object to counsel's last question, why did you do so-and-so, as argument to the witness.

The Court: Overruled.

Mr. Pomeroy: Read the question to him.

(Last question read by the reporter.)

Q. To accuse De La Lama, say the narcotics were his?

(Testimony of Lucian A. Vasquez.)

Mr. Beardslee: I certainly object to the form of the question, your Honor. It isn't cross-examination.

The Court: The objection is sustained.

Q. Why were you tempted to, as you say, to say——

Mr. Beardslee: I didn't hear.

Q. (Continuing): ——to say that the narcotics belonged to Mr. De La Lama when you were first arrested?

A. Are you familiar with the——

Q. (Interrupting): I am asking you the question, Mr. Vasquez. I wish you would answer it.

A. Well, I was just trying to answer it the best way I can. I can't just answer a direct question without letting you know why.

Q. You may answer the question.

Mr. Beardslee: He has asked you why.

A. Well, when a man is under the addiction like that he is cut off automatically, he will do anything in order to feel normal again.

Q. Well, did you think you would get out of it because you might say it belonged to De La Lama when the narcotics were in your automobile also?

A. Well, anything can happen.

Q. Anything can happen. I think that is what is happening now.

Mr. Beardslee: I object to counsel's remark.

The Court: Sustained.

Mr. Beardslee: I'd like to have the jury instructed to disregard it.

The Court: The jury is so instructed, and you

(Testimony of Lucian A. Vasquez.)

will disregard the comments of counsel to the government respecting present conditions.

Q. (By Mr. Pomeroy): You stated that narcotics officers told you you would remain and suffer. What narcotics officer told you that?

A. Well, whoever was handling the case.

Q. Well, where did that conversation take place?

A. In the city jail in Seattle.

Q. Did the conversation ever take place in Mr. Beardslee's office? A. No.

Q. It was in the city jail. And what officer told you that you would remain and suffer?

A. I don't remember.

Q. As a matter of fact, no one told you that, did they? A. They did.

Q. Who was present?

A. Well, there was four or five of them.

Q. You don't know the names?

A. That was while I was being questioned and I was a pretty sick man then.

Q. How long was that after you had been arrested? A. That has been last March, 1946.

Q. How long was it when this occurred after you had been arrested?

A. Oh, I'd say about two or three days.

Mr. Pomeroy: That is all.

Recross-Examination

By Mr. Beardslee:

Q. Do you know the names of any of the agents or officers that were interviewing you at the county jail other than the ones that have been mentioned here?

(Testimony of Lucian A. Vasquez.)

A. Mr. Belland for one, and some other officer, narcotic officer, he is not in court now.

Q. Oh, by the way, you mentioned your sickness. What is the reaction of you when you are suddenly cut off from the supply if you have been using it for years? A. Very bad.

Q. Explain to the Court and jury the nature of the suffering and how soon it hits you when you are cut off after you have used it as long as you did.

A. Well, you have the effects of it immediately after, from five to six hours. And from then on, on the 24th hour is when it gets really bad. You are having all kinds of hallucinations and everything like that, and just feel like you are going stark, raving mad or something.

Q. Does it affect your ability to sleep?

A. It affects everything. I couldn't sleep the three days that I was in jail. I had to lay awake and pace the floor all the time.

Q. Could you eat or anything of that kind?

A. You can't eat, you can't sleep, you can't do anything.

Mr. Beardslee: I think that is all.

Redirect Examination

By Mr. Pomeroy:

Q. How were you using the narcotic?

A. I was taking it by mouth.

Q. In what form? A. Liquid form.

Q. How much would you take at a time?

A. Oh, just enough, I suppose. I don't know.

(Testimony of Lucian A. Vasquez.)

Q. You took it out of this bottle——

A. Yes.

Q. ——that was found on you when you were arrested? A. Yes.

Q. And how often would you take a shot of this liquid opium just immediately prior to the time you were arrested? How often would it be necessary for you to take a shot of this liquid opium?

A. Oh, I'd say every five or six hours.

Q. And all this trip up from Phoenix with De La Lama you were taking these shots, is that correct? A. That is right.

Q. All the time you were in Seattle prior to the time you were arrested? A. Yes.

Q. And Mr. De La Lama didn't know you had any of this on you?

A. Well, I had it in a bottle, I could go in a rest room or anywhere and take it. I didn't have to do it in his presence.

Q. (By Mr. Beardslee): Incidentally, tell us what it looks like. I wouldn't know. I don't think counsel would. What does it look like?

A. Oh, just any medicine bottle.

Q. (By Mr. Beardslee): I mean the solution, what color is it? A. It is black; dark brown.

Q. (By Mr. Beardslee): Something like the color of cascara? A. Yes.

Mr. Beardslee: That is all.

The Court: Step down. Call Plaintiff's next witness.

(Witness excused.)

GILBERT L. BELLAND

called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Please state your name to the Court.

A. Detective sergeant Gilbert L. Belland.

Q. And what is your occupation?

A. In charge of the Seattle Police Narcotic Detail.

Q. And in this occupation with the Seattle Police you work closely with the Federal narcotic officers?

A. Yes, sir.

Q. Do you know the defendant here, Robert De La Lama?

A. Yes, sir.

Q. And do you know the man who just preceded you on the stand, Mr. Vasquez?

A. Yes, sir.

Q. How long have you known who those men are?

A. First saw them about 11 o'clock a.m., March the 23rd, 1946.

Q. Where did you see them?

A. On Fourth Avenue opposite the Trenton Hotel.

Q. Where is the Trenton Hotel located?

A. Northwest corner of Fourth and Cherry.

Q. And what did you observe about them at that time?

A. Well, they drove up in that Arizona car and parked opposite the hotel. Lucian Vasquez came

(Testimony of Gilbert L. Belland.)

down to the corner of Fourth and Cherry on the east side of the streets, crossed over to the west side——

Q. (Interrupting): With whom were you at the time, or were you alone?

A. I was by myself.

Q. All right.

A. Then he went north and entered the Trenton Hotel, was gone about three or four minutes.

Q. Where was De La Lama at this time, the defendant? A. He was in the car.

Q. Who was driving the car?

A. Vasquez drove the car up there and parked it there, and De La Lama a little later got out and put a nickel in the traffic proposition, and then got back in the car. And Vasquez came out of the hotel, he motioned to De La Lama to proceed, and De La Lama drove the car north and Vasquez then got into the car. And at that time I tailed them up towards Frederick and Nelson's; over on Sixth or Seventh I lost them.

Q. When did you next see these two men?

A. At 1:30 p.m.

Q. And where did you see them at that time?

A. They came into the entrance of the Trenton Hotel. Myself, together with Officer O. K. Holschumaker, was stationed there and as they started up the stairway I called them to halt, placed them under arrest and searched them. And upon searching Vasquez I found a jar of opium.

Q. Who had the keys to the car?

A. Well, we marched up towards Fifth Avenue,

(Testimony of Gilbert L. Belland.)

and at that time Vasquez didn't have the keys, so I searched De La Lama and De La Lama had the keys on him.

Q. De La Lama had the keys to the car?

A. Yes, sir.

Q. And then what did you do with these two men?

A. Well, Vasquez opened—after I had gotten the keys from De La Lama, he opened the back of the car and gave me a jar of opium, and then I looked in the glove compartment and found a bottle of solution, opium solution.

Q. That was in the glove compartment?

A. Yes, sir.

Q. And where was the first jar that you found?

A. That was in his—I think his left coat pocket.

Q. It was on his person; is that right?

A. Yes, sir; Vasquez.

Q. And then what did you do with these two men? A. They was placed in jail.

Q. When did you find the additional bottles, the 13 jars of opium?

A. About 11 p.m., Monday night, Vasquez took us to the automobile, or he was with us and wanted to go to the automobile, he would turn over some additional jars. He indicated prior to that time that he had them planted some place.

Q. What is that?

A. He had indicated prior to that time that he had them planted out some place.

(Testimony of Gilbert L. Belland.)

Q. Had the car been searched prior to the time, by the police officers?

A. Just a surface search, and it was sent up to the garage for confinement.

Q. And then on this Monday night, what happened then concerning receiving these other 13 jars of opium?

A. Well, I took, in the presence of the narcotics agent, after he had crawled in there and dug them out and turned them over to me, I retained them and the following morning made a search for fingerprints and none was obtained. And about noon-time I turned them over to Federal narcotic agent Henry Giordano and Harold Moody. Agent Graben also was there, I believe.

Q. What was said about De La Lama's connection with these narcotics?

Mr. Beardslee: Just a minute, if your Honor please. I would like to know what was said by whom after arrest. Even a statement made in the defendant's presence would not be admissible against him.

Mr. Pomeroy: I will withdraw the question if you object to it.

Q. What did you do with De La Lama? What did you eventually do with Mr. De La Lama in that case?

A. I released him from the city jail at midnight.

Q. Did Mr. Vasquez at that time take the responsibility for the narcotics?

A. Yes, sir.

(Testimony of Gilbert L. Belland.)

Mr. Pomeroy: Will you mark these, please?

(Plaintiff's Exhibit 1, photograph, was marked for identification.)

(Plaintiff's Exhibit 2, photograph, was marked for identification.)

Q. Handing you what has been marked as Plaintiff's Exhibit 1 and Number 2 for identification, will you state what those exhibits are, if you know?

A. Exhibit No. 1 is the jar of opium taken——

Q. It is a reasonable facsimile, is that right?

A. Sir?

Q. It is a picture?

A. It is a photograph, picture, of a jar of opium containing my handwriting and initials on it there.

Q. That is on what jars now, on that exhibit No. 1?

A. Exhibit No. 1 and where it was taken from.

The Court: He asked you what jar.

A. No. 1 is the jar that was taken from the person of Vasquez at the time of his arrest. No. 2 jar was given to me by Vasquez from the rear of his automobile. No. 3 is a bottle of solution that I took out of the glove compartment of his automobile.

The Court: Now those three are pictured in what exhibit for identification?

A. The exhibit here is No. 1.

Q. (By Mr. Pomeroy): Exhibit No. 1 for identification. Now tell us what exhibit No. 2 is, for identification?

(Testimony of Gilbert L. Belland.)

A. Exhibit No. 2 consists of a picture of 13 jars of opium that was found in Vasquez's car and turned over to me by Vasquez, in the presence of the narcotic agent.

Q. Now those jars there had a label on them, is that correct? Each jar had a label on it?

A. I placed the label on it.

Q. Did each jar have a label on it?

A. No, they didn't have any labels on them.

Q. Well, did you put a label on them?

A. There is my label. I put them on them.

Q. That is in your handwriting, is that right? Does your signature appear on those labels?

A. My initials. I typed these with my typewriter, on Exhibit 2 I typed them out with the typewriter and it is my initials on it.

Q. Your initials on it? A. Correct.

Q. And what did you do with those jars that are pictured in exhibits No. 1 and 2 for identification?

Mr. Beardslee: I object as not material, if your Honor please. There has been nothing here yet to connect up this defendant with the jars. The testimony has just been to the contrary.

The Court: Overruled.

Mr. Beardslee: Exception.

The Court: Allowed.

A. Exhibit No. 1 was turned over to federal narcotic agent Giordano in the afternoon on March the 25th, and Exhibit No. 2 was turned over to narcotics agents Giordano and Moody, Graben, I think, about noontime of the 26th.

(Testimony of Gilbert L. Belland.)

Q. In other words, you mean that the jars pictured in Exhibit No. 1 for identification were turned over at a certain time and the jars pictured in Exhibit No. 2 were turned over at a certain time?

A. That is right.

Q. Were you present yesterday in my office when Mr. Vasquez was also in that office?

A. Yes, sir.

Q. Were you present when any promises were made to him of any kind?

A. I didn't hear any promises made to him.

The Court: At this point the court will be at recess for ten minutes.

(Short recess.)

The Court: All are present as before. You may proceed.

Q. (By Mr. Pomeroy): Mr. Belland, yesterday afternoon you were in my office with Mr. Vasquez, is that correct?

A. Yes, sir.

Q. And who was present at that conversation that was held at that time?

A. Federal narcotic agent Henry L. Giordano, yourself, Vasquez and myself.

Q. State generally what the conversation was that took place at that time.

Mr. Beardslee: Object to the form of the question, if your Honor please, because it does not give me an opportunity to object to any question that might be growing from that answer.

Q. Was there a conversation between the man

(Testimony of Gilbert L. Belland.)

Vasquez and me concerning his testimony on the stand today? Did we have a conversation about it?

A. Yes, sir.

Q. And did I ask him certain questions and he answered the certain questions?

A. You asked him if——

Q. (Interrupting): Did I ask him certain questions and did he answer certain questions?

A. Yes, sir.

Q. All right, state what you remember of those questions and answers.

A. You asked him what his part was in coming to Seattle with that load of opium, and his answer was that he was just making the delivery, and that the opium belonged to Robert De La Lama and that in making the deliveries if they got arrested he would take the rap.

Mr. Beardslee: I might suggest to your Honor again, and I really wanted to make formal objection, the defendant was not present up there when that conversation took place. What difference does it make whether Vasquez says something or whether I said something or Mr. Gemmill or anyone. It couldn't be used in evidence as against this defendant unless he was there and refused to deny the statements that were made. It is definitely hearsay, your Honor.

Mr. Pomeroy: I agree with that. I think it is. He didn't make an objection before so I was getting the evidence. So I will withdraw the question

(Testimony of Gilbert L. Belland.)

now and ask him not to answer any further now that objection has been made. I agree with your objection.

The Court: The jury will disregard that last answer of the witness as to what was said about Mr. De La Lama. That part of the answer which related to what the witness said about De La Lama will be disregarded by the jury. Lay it out of your minds as if it had not been said in your presence, it being stricken from the record.

Q. (By Mr. Pomeroy): Mr. Belland, how long have you been with the Seattle Police Department?

A. Just a little over twenty-five years.

Q. And what facilities for medical attention do you have down in the Seattle city jail for medical attention for prisoners?

A. Well, there is a physician assigned to the city hospital there that cares for all the prisoners when they are in need, makes examinations. The ones that are arrested, they are usually brought direct to the city hospital for check-up.

Q. And the hospital is right in the same building as the jail, isn't that correct?

A. On the floor below.

Q. And how many years have you been connected with the narcotics end of the law enforcement?

A. I have had charge of the narcotics detail area since July the first, 1934, with the exception of two years that I had charge of the bunco detail.

Q. And during this period of time in dealing

(Testimony of Gilbert L. Belland.)

with narcotic addicts, are they usually examined and given hospital treatment or medical treatment if necessary when prisoners of the city of Seattle?

Mr. Beardslee: Objected to, if your Honor please, as to what the custom may be and what is usually done. I think we are only concerned with the facts in this case. Object to what the custom may be.

The Court: Sustained. The Court wishes to be understood as pausing for a moment when objections are made to give opposing counsel an opportunity to state the theory on which the question is based. Proceed.

Q. (By Mr. Pomeroy): Was Mr. Vasquez denied the facilities of your hospital or city physician during the time that he was incarcerated in the Seattle city jail?

A. Not to my knowledge he wasn't denied it. He may have had some little difficulty in view of the fact that he had a stomach habit and perhaps he didn't want to use the needle.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Beardslee:

Q. You actually, Lieutenant, would not know whether he received treatment or whether treatment was afforded to him, would you?

A. I don't recall what I did or did not do.

Q. You mentioned if he had been in the habit of mixing up this opium or something, and taking it in liquid form?

A. That is right.

(Testimony of Gilbert L. Belland.)

Q. He was a pretty sick boy while he was in there, wasn't he? A. Yes, sir, he was sick.

Q. And he was sick because he could not receive his narcotics, his supply was cut off upon his arrest, isn't that true?

A. I would have to check the record. It doesn't seem——

Q. (Interrupting): Well, Lieutenant, I'd like the jury to have a clear picture of what happens to a man that has been an addict. I believe Vasquez said he had been since 1937.

Mr. Pomeroy: He didn't say, as I recall.

Q. (By Mr. Beardslee): From the time of his operation. Well, anyway, a period of three or four years. You in your experience on the police narcotics squad have observed many addicts, have you not? A. Yes, sir.

Q. Under arrest and all. Will you tell the jury, please, in your experience and as an expert what happens to an addict when he is suddenly cut off from his supply and placed in jail or in confinement? What is his physical and mental reaction?

A. An addict is placed in jail and has a severe habit, he has what is known as withdrawal symptoms. And those symptoms are vomiting and dizziness and reactions of the contracting of the muscles, particularly in the calves of their legs and arms, and more or less nauseated.

However, it has been the practice of the city physician when an addict comes in in a condition like

(Testimony of Gilbert L. Belland.)

that, they administer about, sometimes a half or a quarter and where they start off with a——

The Court (Interrupting): A quarter gallon or a quarter something else?

A. Of a grain of morphine, and the next day an eighth, the following day a sixteenth, and then they don't get any more. Usually the withdrawal covers about three days and after that period they don't get any more. Usually they are sent over to the County and I don't recall that they ever get anything over there.

Q. That is what you call a reduction cure, is it not, where they start tapering them off?

A. That is right. It is rather fast, but it is effective.

Q. Then you spoke of nausea, they are nauseated. And they also lose control of all muscular reflexes, including the sphincter muscle? That is true, isn't it?

A. Yes, sir.

Q. And when a person has been suddenly cut off they will do almost anything to obtain narcotics, will they not?

A. It varies upon their mental conditions. Some are stronger-minded than others.

Q. But they do get so sick that they would trade their respect in society and everything else in order to obtain narcotics, would they not?

A. Some do.

Q. All right. Within your experience hasn't it been true that prisoners have been tortured, that you know to be addicts, they have been withheld

(Testimony of Gilbert L. Belland.)

from the administration of it in order to obtain statements from them?

A. I don't know as that is a fact. Sometimes the doctors don't get to them as regularly as they perhaps would like to have the doctors come and take care of them, and——

Q. Isn't it true, though, that what we will refer to as the average hophead, that he is arrested, he will almost tell any kind of a story in order to obtain relief from his suffering, suffering occasioned by a sudden cutting off of his supply?

A. They do lie terribly to the doctor, yes. They tell them they have got a ten-grain habit when as a matter of fact they haven't got only perhaps a grain and very fortunate to be able, in their line, of being able to supply that.

Q. When you questioned Vasquez he was not suffering at first after his arrest, was he?

A. No, he seemed quite normal.

Q. He was all right, was he not, when he told you that De La Lama knew nothing about the opium that he, Vasquez, had in his car?

A. Well, that was his statements all through from the beginning to the end.

Q. Well, I mean he wasn't suffering when he first made the statement?

A. No, he wasn't.

Q. He didn't have any hallucinations or anything of that kind then? A. No.

(Testimony of Gilbert L. Belland.)

Q. Then even after he commenced to suffer he still told you the same thing that he had advised you when he first was arrested, is that correct?

A. That is correct.

Q. Counsel asked you about the session yesterday afternoon, you said you were present. Mr. Pomeroy was not in the office all of the time that Vasquez was being questioned, was he?

A. I believe he stepped out for a moment.

Q. It is customary, is it not, for an officer desiring to elicit testimony to promise to recommend some leniency or something in exchange for the testimony that he would be inclined to give?

A. I don't know as there is any promises that you could give them.

The Court: He asked you if it was customary to give promises.

The Witness: Not to my knowledge.

Q. (By Mr. Beardslee): Well, all right, supposing three people are arrested and charged with an offense and you don't have much evidence on them. You wouldn't hesitate to recommend a suspended sentence for the one fellow that you figure was necessary as a State witness in order to obtain a conviction against the other two, would you?

The Court: The question is would you hesitate like you are now doing, or hesitate at all?

The Witness: Read that question again.

Q. (By Mr. Beardslee): Supposing three people were arrested, charged with some serious offense. The only way you could obtain evidence sufficient

(Testimony of Gilbert L. Belland.)

to convict would be from one of those three people. You would recommend a suspended sentence for one of the three in order to obtain a conviction against the other two, would you not?

A. The prosecuting attorney's office does that, yes.

Q. And in this instance was there any doubt in your mind but what Vasquez was telling the truth when he said that if he would come over and testify against De La Lama, the defendant in this case, that they would try to effect an early parole or release for him?

A. I don't know as I understand that.

Q. Well, let's see. I think Vasquez may have been mistaken in his identify of the officer, but he did say that Belland—may have said Belland, I don't know. I thought he said Belland and someone else came over to see him at the pen. Was that you or—there is a Joe Bell that is a narcotics officer here. I was just wondering whether you were the one he was referring to or was it Bell, that interviewed him at the pen.

Mr. Pomeroy: Object to the form of the question.

Mr. Beardslee: I was trying to clarify it.

Q. In that interview with him did you or an officer with you suggest that you would recommend an early parole if he would come over and testify against De La Lama?

A. I interviewed him at the McNeil Pen over a period of about three minutes, which we are allowed. I explained to him that we had his part-

(Testimony of Gilbert L. Belland.)

ner, De La Lama, in jail, and we were going to try to convict him, thought we had sufficient evidence without him, but if he wanted to come over and testify and tell the Court now that we found out who actually owned the stuff, that he would be smart in coming over and testifying. "It is up to you whether you want to testify or not."

Q. "Don't hesitate," all right, about being frank in this.

Mr. Pomeroy: I will object to this argument.

The Court: Sustained.

Mr. Beardslee: We all do it. It isn't argument.

The Court: Sustained.

Q. You did say then it wouldn't hurt him to come over and testify?

A. That was left up to his judgment.

Q. Surely. I realize that. But the inference was that if he would come over and testify that it might help him towards effecting an early parole as against a later parole, isn't that true?

A. He realized no one could make him any promises.

Q. Was it suggested or inferred that if he would come over and testify against De La Lama that there would be a recommendation for an early parole or release from the pen for Vasquez?

A. I don't think it was in any form like that.

The Court: Do you care to make a statement as to how in reality it was?

The Witness: My request was to him that we would like to have him come over and testify and tell the Court the truth now that we found out who the actual owner of it was.

(Testimony of Gilbert L. Belland.)

Mr. Beardslee: That isn't in response to my question. I object to it. The answer isn't responsive. I merely wanted to know, if your Honor please, whether any offer or any suggestion was made that he could benefit himself.

The Court: Will you read the question and also the answer? I would like to suggest that the Court had the impression, Mr. Belland, that you take too much time in responding to counsel's questions. And I would like to have you expedite the making of answers to the questions. Will you read the question and the answer?

(Question and answer read by the reporter.)

The Court: The objection is overruled. I thought that he made some objection as not responsive, and that is overruled.

Mr. Beardslee: Well, there was more occurred after that. He went on to something that wasn't responsive.

The Court: The question of the Court and the answer will be stricken and the jury instructed to disregard it. Propound another question.

Q. (By Mr. Beardslee): Was there a promise made or a promise indicated or inferred of any kind to Vasquez when he was interviewed at the penitentiary, that you know of?

A. Proceed.

Q. Did you understand?

A. I made the remark that it perhaps wouldn't do him any harm if he did that. What inferences he received from it I don't know.

(Testimony of Gilbert L. Belland.)

Q. Now, Lieutenant, you went into this case quite thoroughly when the arrest was made, did you not? A. Yes, sir.

Q. And you caused some investigation, I presume, to be made of Mr. De La Lama?

A. Through the narcotics agents investigation was made.

Q. And isn't it true that I was permitted to be present in the city jail I believe the Monday following the Saturday night on which they were arrested?

A. I remember you being there, sir.

Q. And I insisted that I had a right to see my client, Mr. Vasquez? A. Correct.

Q. You might not remember offhand who were present, but it is my recollection that Harold Moody was present? A. Yes, sir.

Q. And was he a Federal narcotics officer?

A. He was.

Q. Is he available so he could testify as to what transpired? A. I don't believe so.

Q. It is my understanding that he is ill or incapacitated, is that true? A. Yes, sir.

Q. And I don't recall—there were some other city officers there too, were there not?

A. No. They just participated in the arrest but not in any——

Q. (Interrupting): No, no, no, I mean that evening when I was down in the conference.

A. I don't recall.

Q. Do you recall whether a Joe Bell was there?

A. I do not.

(Testimony of Gilbert L. Belland.)

Q. The agent here in court was present, was he, sitting in the back row alongside of Bob Stewart there, in the brown suit?

A. Giordano may have been there. I don't recall.

The Court: How do you spell his name, so that all those present will be able——

The Witness: Henry L. Giordano. G-i-o-r—
G-i-r-a-d-a-n-o.

The Court: Raise your voice a little higher so that all those present can hear you. Speak up distinctly and clearly and promptly.

Q. Well, everyone there, Lieutenant, participated in the investigation of that case, the seizure of the opium involved in this hearing, is that true?

A. That is correct.

Q. And it is also true that Mr. Vasquez was interviewed at a considerable extent?

A. He was.

Q. And not in the presence of De La Lama on all occasions?

A. That is right.

Q. And wasn't De La Lama interviewed separately to quite some extent by all the officers interested, separate and aside from Vasquez who just testified this afternoon?

A. He was interviewed separately from Vasquez.

Q. And after all of your interviews and the checking of all records, both by the police department and the Federal narcotics squad, you came to the conclusion that De La Lama, the defendant in this case, had no interest in that opium, did you not?

A. He was released.

(Testimony of Gilbert L. Belland.)

Q. He would not have been released if you or the Federal officers or anyone else voiced any objection or considered, after your thorough investigation, that he had any interest in the opium, would he have been?

A. It is a question of what you can prove.

Q. What?

A. It is a question of what you can prove.

Q. Do you recall when the defendant in this case was released from that arrest with respect to the date of the arrest? I don't care for the dates.

Two days, three days, four days after it?

A. He was released about 11 o'clock. Vasquez told us about the 13 jars and we took him up there and that was turned over to me. And then we came back to the city jail and he wanted De La Lama released, and I made out releases for him. And he also wanted \$500 of De La Lama's money and De La Lama released to him \$500 which was placed in Vasquez' account. And he was put on the street immediately thereafter.

Q. Well, this \$500 you are talking about is the \$500 or more that Vasquez gave De La Lama right at the time of the arrest, told him to "keep this, I may have to go to jail"? Isn't that right?

A. I didn't hear that, sir.

Q. At the time that they were apprehended the first thing Vasquez did was to shove his wallet over to De La Lama, isn't that so?

(Testimony of Gilbert L. Belland.)

A. No sir. Vasquez had about \$1507 on him, and De La Lama had nine hundred seventy something. And they were discussing the amount of bail they would have to put up, and Vasquez wanted to be able to make bail and he got \$500 from De La Lama.

Q. Yes. But what I am getting at, right at the time of the arrest, the apprehension of these people, Vasquez immediately handed over some funds to De La Lama, told him, "You will probably be on the outside. I will be in. Use this to get me out."

A. No transfer was made.

Q. Who was present at the time of the arrest?

A. I was.

Q. And who else?

A. They both had their hands up in the air. They could not have made any transfer.

Q. Who went out there?

A. Officer O. L. Holschumaker, and they were handcuffed.

Q. All right. And how did you take them to the jail?

A. When I got up about half ways to Fifth Avenue——

Q. Did you walk up or go in the car?

A. Walked up.

Q. All right.

A. And then I couldn't find the keys on Vasquez, and so I searched him and found the keys on him.

The Court: On whom?

The Witness: On De La Lama.

(Testimony of Gilbert L. Belland.)

Q. (By Mr. Beardslee): All right. Isn't it true that you started walking up towards the jail, that Vasquez told De La Lama, "Well, you probably will be on the outside. Take this and try to get me out of jail", or words to that effect? I may not be quoting him exactly.

A. Vasquez drove his car down with me in it from where it was parked to the police station and De La Lama was brought to the station by the other officer.

Q. Yes, but you say you started walking down the street together. I want to know what happened at the time of the arrest. Isn't it true that Vasquez turned over his belongings to De La Lama?

A. No sir.

Q. At that time? A. No sir.

Q. Did he turn over any belongings to De La Lama?

A. Not to my knowledge, he couldn't have turned over anything.

Q. Did he tell De La Lama that he probably wouldn't be in jail but he was afraid he would and for him to try to make arrangements for him to get out of jail and to trial? Was this Officer Holschemaker that was with you at the time of the arrest?

A. Officer Holschemaker was in the rear of me when I made the arrest and stepped up and helped handcuff one of them.

Q. Well, were you present on one occasion when Officer Holschemaker told me what had happened?

(Testimony of Gilbert L. Belland.)

Mr. Poméroy: I will object to this, if the Court please, on the ground he can subpoena Officer Holschemaker.

The Court: The objection is overruled.

Mr. Beardslee: I don't think it will be easy.

The Court: The Court's ruling dispenses with it. His objection is overruled.

Mr. Beardslee: Oh.

Q. (By Mr. Beardslee): Were you present at any time when I had a conversation with Officer Holschemaker with respect to what happened immediately after the arrest in this case?

A. I don't believe so, because Holschemaker and his partner stepped right out of the picture immediately after the arrest, because I took over the investigation from then on. They helped me get them to the office.

Q. I see. Well then, to the best of your recollection at this time you do not remember and have not learned whether Vasquez handed anything over to De La Lama with instructions for him to get an attorney for him or anything of that kind? You don't remember any such thing of that nature?

A. Well, I remember he came down and he turned some money over to you or something. I got a release for it or something.

Q. By whom was that release signed?

A. I think you got a release for some of his money as his counsel. But that has nothing to do with the \$500 that was taken from De La Lama's account and transferred to Vasquez at the booking office, and had to be signed by them.

(Testimony of Gilbert L. Belland.)

Q. Vasquez was the one that had most of the money in his possession, isn't that true?

A. So that he would be able to make his bail eventually.

Q. Now in the course of your investigation before releasing De La Lama you learned, did you not, that he was on his way over here to visit a brother in Tacoma?

A. That is what I was told by both De La Lama and Vasquez.

Q. The Federal agents indicated that he did have a brother in Tacoma? A. Yes.

Q. It wasn't until after you satisfied yourself that you turned De La Lama loose? That is true, isn't it?

A. Well, he didn't have any opium in his possession, and Vasquez asked if we would turn him loose inasmuch as he didn't have anything on him, and it was all his, he didn't have anything to do with it. He just come up here for the ride, and they were leaving that afternoon, the afternoon we arrested them. And I was very happy to get the 13 jars of opium out of circulation.

Q. And it was Vasquez' car, was it not?

A. Well, that was turned over to the government, yes.

Q. And I believe you said that you had made a cursory examination of it. That is, you and other officers made the cursory examination of the car?

A. That is right. We didn't make a thorough search of it.

(Testimony of Gilbert L. Belland.)

Q. And was this opium so concealed that a thorough search would be necessary in order to find its whereabouts?

A. Well, just a quick search wouldn't find it.

Q. You would not find it.

A. That is right.

Q. So it is a car that you or I might be riding in, if we were unsuspicious we certainly wouldn't run across it or know where it was?

A. That is right.

Mr. Beardslee: Redirect?

Mr. Pomeroy: No questions.

(Witness excused)

Mr. Beardslee: Oh, I'd like to ask one more question, if your Honor please.

The Court: Can you do so from where he is now?

Mr. Beardslee: Yes.

Q. (By Mr. Beardslee): Were you here when Vasquez testified this afternoon? A. Yes.

Q. And was his story today, his testimony, the same as what he told you at the time of the arrest and while he was in jail up there, in substance?

A. Pretty much the same. The story was that it was all his.

Q. Well, all I want to know, is the testimony he gave today appreciably in substance the same as what he told you at the time of his arrest?

The Court: With reference to what particular subject?

(Testimony of Gilbert L. Belland.)

Mr. Beardslee: With respect to the opium, who owned it, and whose car it was, and whether De La Lama had interest in it or knew anything about it?

A. His story yesterday wasn't—

Q. No, no, no. The testimony today compared with the story at the time of his arrest when you released De La Lama?

A. Yes, that part of it was substantially the same. He stuck to his story at that time, that it was all his and De La Lama didn't have anything to do with it.

Q. In other words, he has testified to the same thing he told you when he was first arrested?

A. That is right.

Mr. Pomeroy: Mr. Belland may be excused for the rest of the afternoon?

The Court: Agreeable?

Mr. Beardslee: Yes, your Honor.

The Court: Granted.

(Witness excused.)

HENRY L. GIORDANO

a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Please state your name to the Court.

A. Henry L. Giordano, G-i-o-r-d-a-n-o.

Q. And what is your occupation?

(Testimony of Henry L. Giordano.)

A. Narcotics agent for the Federal Bureau of Narcotics, Seattle.

Q. What year did you start to work there?

A. 1941.

Q. Mr. Giordano, do you know the defendant, De La Lama? A. I do.

Q. And do you know Vasquez? A. I do.

Q. When did you become acquainted with these two?

A. The first time I saw the defendant De La Lama and Vasquez was on the morning of March 23, 1946.

Q. And where was that?

A. That was in the vicinity of Fourth and Cherry.

Q. Were you alone or with someone?

A. I was alone at that time.

Q. And state what you observed at that time?

A. At that time I observed a 1940 Oldsmobile convertible drive up and I observed Vasquez get out of the automobile and go into the Trenton Hotel at the corner of Fourth and Cherry. I observed the defendant De La Lama get out of the car and walk up and down the street, and get back into the automobile. A short time after that I saw Vasquez come out of the Trenton Hotel, motion to De La Lama in the automobile and De La Lama started the automobile and drove to the corner where he picked up Vasquez.

They drove up town and I followed them and they made several turns up there in the downtown sec-

(Testimony of Henry L. Giordano.)

tion, eventually parked the car in the Roosevelt Hotel Garage.

Q. When did you next see them?

A. I next saw them on March 25, 1946.

Q. And where was that?

A. That was at the city jail.

Q. That was after they had been arrested as described by Lieutenant Belland?

A. Yes, sir.

Q. Will you hand him Exhibits 1 and 2, please? You are being handed what are marked Exhibits 1 and 2. Will you state what those are, if you know?

A. Exhibit 1 is a picture of two jars of opium, smoking opium, and a bottle of opium solution that was turned over to me by Detective Belland at the city jail on March 25, 1946.

Q. And the markings on there, are those your initials on there?

A. My initials are on each of the jars and on the bottle. And Exhibit No. 2 is a picture of 13 jars of smoking opium that I observed Lucian Vasquez take out of the hidden compartment of his automobile and turn over to Detective Belland, who the following day turned over to me these 13 jars of smoking opium.

Q. Now these jars, the 13 jars and also the other 2 jars and the bottle, what did you do with them after having received them from Lieutenant Belland?

A. Well, I took them down and had them photographed, and then I took them to the U. S. Chemist, Hugo Ringstrom.

(Testimony of Henry L. Giordano.)

The Court: Will you spell your last name?

The Witness: G-i-o-r-d-a-n-o.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Beardslee:

Q. You weren't present at the time of the arrest, were you? A. I was not.

Q. Were you present in the city jail at the time De La Lama was released, two or three or four days after the arrest?

A. I was there that evening. I wasn't present right at the time he was released.

Q. But everyone consented to his being released?

A. Yes, sir.

Q. That is both Federal as well as police narcotics. And the consent to the release was given after both Mr. De La Lama and Vasquez had been interviewed together and separately?

A. That is correct.

Q. And when was that approximate date? I am sorry I don't recall it. Around March.

A. The approximate date of what?

Q. When he was arrested and when he was released. Was that in March, 1946?

A. He was released March 25, 1946.

Q. A period of about 14 months ago?

A. Approximately.

Mr. Beardslee: I have no further questions.

Mr. Pomeroy: Step down.

(Witness excused.)

WALTER G. GRABEN

called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Pomeroy:

The Court: Will you take the witness chair and state your name and spell your last name?

The Witness: Walter G. Graben, G-r-a-b-e-n.

Q. (By Mr. Pomeroy): And what is your occupation, Mr. Graben?

A. I am Narcotics Inspector with the Bureau of Narcotics.

Q. You are being handed exhibits 1 and 2 marked for identification. Will you state what those are, if you know?

A. Those are photographs of jars of opium and an opium solution.

Q. And did you have those jars in your possession?

A. I did, yes.

Q. From whom did you receive them?

A. I received them from Hugo Ringstrom, the chemist.

Q. And what happened to those jars of opium?

A. They were destroyed.

Q. And what authority was it that destroyed them? I say, what was the authority to destroy them? What was the usual procedure, or what is the procedure that causes the narcotics bureau to destroy jars of opium?

A. When a case has been—when the evidence has been entered—I didn't just—

(Testimony of Walter G. Graben.)

Q. Well, I say, the usual procedure and what happens to evidence after a case is closed is that the Narcotics Bureau gives the evidence or sends it to a hospital, is that correct?

A. Yes, that is correct. The narcotics are either destroyed if they are not fit to be used, or the usable sort, and those that are valuable or could be used and are in such a condition as are fit for use, those are sent to hospitals.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Beardslee:

Q. This case was closed at the time you caused the opium to be destroyed, was it not, as far as your office was concerned?

A. It was considered closed at that time.

Q. That is, I presume, after Vasquez had pleaded guilty and been sentenced.

A. Yes.

Q. And then you proceeded to destroy it?

A. Yes.

Mr. Beardslee: That is all.

Mr. Pomeroy: You may step down.

(Witness excused.)

HUGO RINGSTROM

called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Please state your name to the Court.

A. Hugo Ringstrom, R-i-n-g-s-t-r-o-m.

Q. What is your occupation, Mr. Ringstrom?

A. Chemist for the Alcohol Tax Unit.

Q. That is part of the United States Treasury Department? A. Yes, sir.

Q. And as such do you make chemical analyses for the Narcotics Bureau? A. Yes, sir.

Q. The Narcotics Bureau is also part of the U. S. Treasury Department, is that correct?

A. Yes, sir.

Q. Mr. Ringstrom, directing your attention to what is marked exhibits 1 and 2, marked for identification, do you recognize what those exhibits represent? A. Yes, sir.

Q. And you recognize those labels on there?

A. Yes, sir.

Q. And jars such as were pictured there, were there jars such as that delivered to you?

A. Yes, sir.

Q. And what were they known as by you, what case? A. The Vasquez case.

Q. The Vasquez case. And you have an independent recollection of that case, do you?

A. Yes, sir.

(Testimony of Hugo Ringstrom.)

Q. And did you cause—what did you do with them after you had analyzed the contents?

A. I sealed them and turned them over to Narcotics Agent Graben.

Q. What did your analysis show as to the contents of all those jars?

Mr. Beardslee: I might suggest that that has been reduced in evidence, and I think it is incompetent. They have not been connected up with this defendant in any way. That will be the basis of my objection to the admission of exhibits 1 and 2 when they get around to it. All this testimony so far is to the effect that this defendant knew nothing about it, didn't have it in his possession. So I object on the ground that it is incompetent, and immaterial, probably prejudicially so.

Mr. Pomeroy: There is evidence before the Court, in fact Vasquez himself testified today that these jars contained opium.

The Court: You mean those pictured in these exhibits?

Mr. Pomeroy: No, no, the opium that he had in the automobile that he drove up here from Arizona with Mr. De La Lama in, and the connection has been that Belland testified the jars came from this car, and from Mr. Vasquez, they went to Mr. Giordano, Mr. Giordano testified he gave them to Mr. Ringstrom, Mr. Ringstrom testified he gave it to Mr. Graben. Mr. Graben testified it was destroyed, and the connection has been made all the way through.

The Court: But what connection is there with

(Testimony of Hugo Ringstrom.)

what is shown by these pictures, marked Plaintiff's Exhibits 1 and 2?

Mr. Pomeroy: I don't think my question referred to the pictures, if the Court please.

The Court: Read the question.

(Question read as follows: "What did your analysis show as to the contents of all those jars?")

The Court: How many questions would you say it took you to develop the identity of the jars taken from the automobile in question, or Vasquez, with this question you now ask?

Mr. Pomeroy: Mr. Ringstrom stated he had an independent recollection of the Vasquez case, and that these jars in the picture were those in the Vasquez case. But he had an independent recollection of the analysis of the Vasquez case.

The Court: The objection is overruled. He may answer that.

Mr. Beardslee: I would like to make clear the purpose of the objection, your Honor, was that we are just wasting time talking about the Vasquez case and there has been no connection between this opium and De La Lama. In other words, testimony has been just to the opposite, that De La Lama had nothing to do with it.

The Court: The ruling will stand.

Mr. Beardslee: Exception.

The Court: Allowed.

Mr. Pomeroy: Will you now read him the question, please?

(Question was again read by the reporter as

(Testimony of Hugo Ringstrom.)

follows: "What did your analysis show as to the contents of all those jars?")

A. All the jars contained smoking opium and the bottle contained a solution of opium.

Q. Directing your attention to the two jars contained in the picture, as shown in the picture Exhibit No. 1, what quantity did you find in those jars?

Mr. Beardslee: Objected to, if your Honor please, as having no bearing on this case unless it is better connected up with the defendant. It is immaterial, prejudicial.

The Court: The objection is overruled.

Mr. Beardslee: Exception.

The Court: Allowed.

A. One jar contained 3 ounces, and the second jar contained 3 ounces and 150 grains.

Q. Now, directing your attention to the exhibit No. 2, how much did you weigh as being the quantity contained in those 13 jars?

A. 54 ounces, 20 grains.

Q. Will you repeat that, please?

A. 54 ounces and 20 grains.

Mr. Pomeroy: You may inquire. Cross-examination?

Mr. Beardslee: No, thank you.

(Witness excused.)

The Court: You may step down. Call your next witness.

(Discussion between Court and counsel.)

The Court: I think we ought to stop here now. The further proceedings in this case and the court session will be adjourned until tomorrow morning

at 10 o'clock, and the jury will retire subject to the previous admonitions which have been previously given to the jury. You will remember and heed all those admonitions during the intermission of the Court until tomorrow morning at 10 o'clock. Be back promptly tomorrow morning at 10 o'clock. You may now retire.

(Whereupon, at 4:35 o'clock p.m., the hearing was adjourned until 10 o'clock a.m., May 21, 1947.)

May 21, 1947, 10 o'Clock A.M.

Court convened pursuant to adjournment; present as before.

The Court: May the record show that a call of the jury is waived, that all the jurors are present and also all parties on trial with their counsel. Does the plaintiff so agree?

Mr. Pomeroy: The government agrees.

The Court: Does the defendant?

Mr. Beardslee: Yes, your Honor.

The Court: Let the record show that. You may proceed with the trial.

Mr. Pomeroy: I will offer Exhibits 1 and 2.

Mr. Beardslee: At this time, if your Honor please, I had a matter I would like to take up with the Court.

The Court: The jury will temporarily retire to the jury room.

(Jury retires.)

The Court: You may proceed, Mr. Beardslee.

(Discussion concerning taking of defendant's picture for the newspaper; no ruling.)

The Court: Does anyone wish to make any statement about these offered exhibits, Plaintiff's Exhibits 1 and 2?

Mr. Beardslee: I object to them, if your Honor please, because there is no connection at all between those exhibits and this defendant. In fact, the government, in my opinion, has proven the defendant in this case had no connection whatsoever with the narcotics that are pictured in that photograph. It hasn't been properly connected up, if your Honor please.

The Court: Does the plaintiff wish the Court to have the benefit of any authorities upon the plaintiff's right to have these documents admitted in evidence?

Mr. Pomeroy: Yes, your Honor. Do you wish me to answer the point I brought up?

Mr. Beardslee: You understand I am not objecting to the competency because they are pictures taken of it. I am objecting to the materiality, which could result in prejudice.

The Court: Are you objecting to the exhibits on the ground that they are photographs of the real matter claimed by the government to be material instead of being the material itself, the contraband itself?

Mr. Beardslee: No, your Honor, I am not offering that objection. It is merely that there is no

more relationship, if the actual opium had been brought, I mean, I would offer the same objection. There is no more relevancy than if somebody brought in a case of whiskey in some other case. It hasn't been properly tied up, hasn't been shown it is material to this case and it certainly could be very prejudicial.

The Court: Then the Court will not take up your time in asking you to comment upon the admission of the photographs. That question you need not deal with. But the other thing, suppose instead of photographs you had the contraband itself here?

Mr. Pomeroy: Yes, your Honor.

The Court: Address your remarks to the admissibility of that.

(Argument by Mr. Pomeroy and Mr. Beardslee.)

The Court: The Court is of the opinion that under the facts and conditions proven in this case touching the admissibility of the contraband itself against this defendant it shows it is admissible, and the Court is of the opinion that these photographs of the contraband are admissible in evidence in view of the fact that there isn't any objection to the exhibits as photographs; and that the only objection that there is made to this exhibit is the same one which would be made and could be made against the contraband itself were it here in the place of these exhibits. And I think that there is a reason for supporting admissibility of these photographs

of the contraband in this case because it has been testified that in the ordinary course of government business the contraband itself had, after these photographs were taken, been destroyed and is not itself available.

Mr. Beardslee: Been destroyed, as I understand it, because they considered the case is closed.

The Court: Well, it has been destroyed in the ordinary course of the government's business, and in the usual manner as I understand from the testimony, of disposal of such property. And after the jury is brought in the Court intends to rule admitting these two exhibits in evidence. Mr. Beardslee?

Mr. Beardslee: I have nothing further to say except the record should show that this argument has taken place in the absence of the jury, and I would like to preserve an exception to your Honor's ruling.

The Court: You may do that. Bring in the jury.

(Whereupon the jury returned to the jury box.)

The Court: All of the jurors have returned to their places as before. Plaintiff's Exhibits 1 and 2 and each of them are now admitted in evidence, and defendant excepts and his exception is allowed.

(Plaintiff's Exhibits 1 and 2, photographs, were received in evidence.)

(There followed next the testimony of Hugh Olivey, previously transcribed.)

HUGH OLIVEY

called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Pomery:

Q. Please state your name to the Court.

A. Hugh Olivey.

Q. How do you spell the last name?

A. O-l-i-v-e-y.

Q. Mr. Olivey, do you know the defendant,
Robert De La Lama? A. Yes.

Q. Where did you first meet him?

A. In Phoenix.

Q. About when was that?

A. In June of last year.

Q. Mr. Olivey, how long were you in Phoenix
on that occasion? A. About four days.

Q. And where did you live when you were in
Phoenix? A. At the Palomine Auto Court.

Q. Were you alone or with someone?

A. I was with Mr. Van Treel.

Q. And Mr. Van Treel, what was his occupation
at that time?

A. He was a federal narcotics agent.

Q. And what was your occupation at that time?

A. I was a special employee, narcotics.

Q. And where is Mr. Van Treel now?

A. He died a week ago Sunday.

Q. He died a week ago Sunday. Now Mr. Olivey,
during the four days that you were in Phoenix how
often did you see Mr. De La Lama?

A. About every night.

(Testimony of Hugh Olivey.)

Q. And where did you see him?

A. I met him at the El Paso Bar.

Mr. Beardslee: I will submit, if your Honor please, that that would have no bearing whatsoever upon this case. This is tried in this jurisdiction and the offense alleged to be in this jurisdiction. Where he saw Mr. De La Lama each and every day wouldn't have any bearing whatsoever on this case, in Phoenix. There is no charge in the indictment.

Mr. Pomeroy: Will you read the last question and and answer, please?

(Last question read by the reporter.)

The Court: What year and what time? That is what the Court would like to know so as to know what the inquiry is about.

Mr. Pomeroy: My recollection is that he testified it was in June, last year.

The Court: That may be, but these questions don't show that.

Q. Will you state again, Mr. Olivey, when this occurred? When you were in Phoenix and when you saw Mr. De La Lama?

A. I was in Phoenix from the 25th to the 30th of June, 1946.

The Court: Before you proceed further, in view of the objection the Court would ilke to know from plaintiff's counsel what theory of admissibility he elaims in this connection.

Mr. Pomeroy: Conversations and admissions taking place by the defendant.

(Testimony of Hugh Olivey.)

The Court: You haven't said so, but I assume concerning some fact at issue in this case?

Mr. Pomeroy: Concerning this particular case, admissions concerning this particular case.

Mr. Beardslee: I think at this time, your Honor please, he might show the time and place where conversations occurred pertaining to this offense, but——

The Court: And who was present.

Mr. Beardslee: Yes.

Mr. Pomeroy: I haven't started to ask about a conversation yet. I am merely laying a foundation.

Mr. Beardslee: He asked where he had seen him, and in counsel's opening statement he referred to a conversation that would be material to this case. And counsel referred to the date and place where it occurred, and it was one conversation. Now this witness may have seen him at a bull fight or may have seen him in church or may have seen him in places that could tend to be prejudicial. I don't know. But if it has no bearing on the case I think counsel should be instructed to get down to the meat of the coconut and find out when and where any conversation took place pertaining to this case.

The Court: All of these objections are overruled upon this condition: That counsel for the plaintiff must ask the witness to relate the circumstances, the time and place and persons present when the alleged statement was made before he asks the witness what the statement was.

Mr. Pomeroy: I haven't asked that yet. I think this is all anticipation by counsel.

(Testimony of Hugh Olivey.)

The Court: You may proceed under the conditions stated by the Court.

Q. (By Mr. Pomeroy): You state that the first place you saw him was in the El Paso Bar, is that correct? A. Yes, sir.

Q. How and under what circumstances did you first see him there?

A. The bartender, Ernest Collins, introduced Mr. Van Treel and I to De La Lama.

Q. And did you have a conversation, you and Mr. Van Treel, have a conversation with Mr. De La Lama on that occasion? A. Yes.

Q. And who was present at that conversation?

A. Mr. Van Treel and myself and Mr. De La Lama.

Q. State what that conversation was?

A. Well, Mr. Van Treel told Mr. De La Lama that he thought that on this trip up north when De La Lama and Vasquez had been picked up here in Seattle, that he had brought kind of a poor partner, that Vasquez had been very careless in carrying people's addresses in his pocket, addresses of different users that were known in the Northwest. And that after Vasquez was arrested that several of these people had been picked up and questioned.

After Mr. Van Treel had said this, why Mr. De La Lama got kind of mad and said that he didn't think that Vasquez was responsible for that, and that he personally trusted Vasquez, and that when they were arrested here in Seattle that the opium that was found in the back of Vasquez's car had belonged to him personally.

The Court: Whom? Whom?

(Testimony of Hugh Olivey.)

A. To Mr. De La Lama. That Vasquez had claimed ownership of it because it was in his car.

The Court: Whose car? "His". Whose car?

A. Vasquez' car, and that Vasquez would be held responsible for the transportation of it anyhow. So he went ahead and claimed the ownership as well. So in that way Mr. De La Lama felt that he was indebted to Vasquez and said at the time that he intended to try to repay Vasquez if possible, to send him some money to repay this favor.

And he went on further to state that Vasquez was leaving that evening for Seattle and that he was going to give Vasquez some narcotics to use on the trip up here, and also to hold him while he was going to trial.

After Mr. De La Lama left, Mr. Van Treel and I went to the Western Union and sent a wire to Joe Belland.

Mr. Beardslee: Well, this is something not in the presence of the defendant, the wire that he sent. What they may have said would be strictly incompetent and hearsay.

The Court: What he did about the wire is not responsive to the question, anyway. The objection is sustained as to that at this point.

Q. (By Mr. Pomeroy): What further, if anything, did Mr. De La Lama say concerning the reason for his going north with Vasquez on that trip?

Mr. Beardslee: Now that, if your Honor please, is directly leading. The witness hasn't expressed

(Testimony of Hugh Olivey.)

any statement on that. Counsel now is implying that he did have such a conversation; putting words in this witness' mouth.

The Court: That objection is sustained.

Q. (By Mr. Pomeroy): Was there any further conversation concerning the northward trip of Vasquez by De La Lama on that occasion?

A. Yes. Mr. De La Lama—conversation was spread out over a period of about an hour, and during that time Mr. De La Lama said that he had came along so as to protect his money that he had invested in this load of opium that was to be sold through the Northwest.

Q. What name was Mr. Van Treel introduced to Mr. De La Lama by? A. As Jack Talbot.

Q. As Jack Talbot? A. Yes.

Q. And that was an assumed name, was it?

A. Yes.

Q. After this conversation where did you and Mr. Van Treel go?

A. We went to the Western Union office.

Mr. Beardslee: I object as immaterial where they went, if your Honor please. We are not interested after they were through with De La Lama.

The Court: The Court cannot at this moment tell whether or not it is material or not. Does the government promise to connect up its materiality with the charge against the defendant here?

Mr. Pomeroy: Well, it is not directly—it just goes on to corroborate what the witness already has testified to, that they went to this Western Union office, that is all, which was objected to before.

(Testimony of Hugh Olivey.)

The Court: That objection will be sustained.

Q. (By Mr. Pomeroy): Where else while you were in Phoenix did you see Mr. De La Lama?

A. At the Palomine Auto Court.

Q. And was that at the place where you and Mr. Van Treel were living while you were in Phoenix?

A. Yes.

Q. During the period that you were in Phoenix did you at any time observe Mr. De La Lama using narcotics?

A. Yes; at our cabin.

Mr. Beardslee: What was that answer?

A. Yes; at our cabin.

The Court: Did you understand it?

Mr. Beardslee: Yes, your Honor.

Q. And what type of narcotics did he use and how did he use them?

A. It was smoking opium, it was cooked up and rolled into a pill and eaten.

Q. Rolled into a pill and eaten?

A. Yes.

The Court: Mr. Olivey, will you keep your voice raised so all present can hear? Sometimes one's voice doesn't carry as well in the room as at other times. Keep your voice raised up so all can hear.

Q. (By Mr. Pomeroy): What was the purpose of you and Mr. Van Treel keeping up this association during this period of time with Mr. De La Lama in Phoenix?

Mr. Beardslee: Just a minute. Your Honor can readily see what that is leading to, the purpose of why they were keeping it up is bound to result in incompetent testimony of the——

(Testimony of Hugh Olivey.)

The Court: Mr. Reporter, will you read the question?

(Question read by the reporter.)

The Court: I will hear you now, Mr. Pomeroy, in response to the objection.

Mr. Pomeroy: Well, I am about to make an offer of proof.

• Mr. Beardslee: I suggest it be made in the regular way, your Honor. Counsel is familiar with the rules; offers of proof that will result in prejudice should be made to the Court.

The Court: You make a point it should be made in the absence of the jury?

Mr. Beardslee: Yes, your Honor.

The Court: The jury will temporarily retire.

(Jury leaves jury box.)

Mr. Pomeroy: My offer of proof, if the Court please, in this particular type of questioning is to the effect that they were there for four days attempting to get a shipment of opium from Mr. De La Lama, and they did succeed in buying several cans of opium from Mr. De La Lama and paying him a certain amount of money for it.

The Court: That, however, was a different transaction from that in this case, was it?

Mr. Pomeroy: That is correct.

The Court: Of course, he may have become a dope peddler or wholesaler in disconnected transactions at a later date than the transactions charged in this case. Is that not possible?

(Testimony of Hugh Olivey.)

Mr. Pomeroy: That is possible. However, I believe under our rules or our law that similar transactions made in the same period of time can be shown in our proof. And I believe——

The Court: Shown for what purpose, Mr. Pomeroy?

Mr. Pomeroy: Line of conduct.

The Court: Well, for the purpose of proving what, which is material in the case on trial? Would you like to look at those cases? I will give you a few minutes. It is probably of sufficient importance to you to justify you in looking at some expression of a court. Do you need a few minutes?

Mr. Pomeroy: Yes, I do.

The Court: You may have ten minutes. Court will be at recess for that time.

(Short recess.)

The Court: I will hear counsel now if you are ready, if the defendant is present with his counsel.

Mr. Pomeroy: If the Court please, I had time to look up one line of cases.

The Court: The question is whether or not subsequent transactions can be shown, as well as previous ones, on this question.

(Extensive argument and discussion.)

The Court: Now, any evidence that you offer to establish the defendant's purpose or interest is inadmissible insofar as it concerned that purpose one day, one month or two months or some other time after the commission of the crimes alleged in

(Testimony of Hugh Olivey.)

this case. But the purpose which the defendant had in mind in doing the acts alleged in the indictment is of interest and any evidence that reasonably reflects light upon that issue of the defendant's intent in doing the acts charged in the indictment might be admissible, if it isn't too remote.

Mr. Pomeroy: Well, the purpose of my offer of proof is to stay away from the question which your Honor I believe correctly rules is incorrect, and that is asking the witness what the purpose of his acts with De La Lama may have been at that time, and to elicit from the witness this information that he did while with De La Lama purchase from De La Lama certain narcotics and pay money for it.

The Court: To prove that he was customarily in the narcotics——

Mr. Pomeroy: The business of selling narcotics.

The Court: The narcotic business as bearing upon his intent to do the acts charged in the indictment?

Mr. Pomeroy: Yes, your Honor.

The Court: And that such other instances took place within the time here mentioned, which is two months or three months after the occurrence of the events charged in the indictment?

Mr. Pomeroy: Yes, your Honor.

The Court: The Court is of the opinion that it is reasonably near in time and that it has some bearing upon the question of the defendant's intent. As to how much I think it is proper for the jury

(Testimony of Hugh Olivey.)

to determine, and the Court is further of the opinion that the evidence last mentioned by Mr. Pomeroy is admissible for the purpose stated. That is, for the purpose of throwing light upon or tending to prove the intent of the defendant in connection with the acts charged in the indictment to have been offenses against the laws of the United States.

Mr. Beardslee: I should, your Honor, like to see any decision that holds what subsequent act three months after the alleged offense in this case occurred would be admissible.

The Court: The Court thinks it is reasonably probative and therefore expresses the opinion stated.

Is there anything further in the absence of the jury? Bring in the jury. But I wish to make it clear now while the jury is getting here, that we are not concerned with the purpose of the witness who is on the stand testifying. We are concerned only with the acts of the defendant and the statements of the defendant which concern his intent and purpose at the time he did the acts and in connection with his doing of the acts charged in this indictment, not at some later time.

Mr. Beardslee: Your Honor will allow me an exception?

The Court: Allowed.

(Jury returns to jury box.)

The Court: Let the record show the jurors have returned to their places in open court. You may proceed.

(Testimony of Hugh Olivey.)

Q. (By Mr. Pomeroy): Mr. Olivey, during the period of time you were in Phoenix and that you saw Mr. De La Lama, did you have any narcotics transactions with him?

A. Yes. Mr. Van Treel and I purchased four cans of opium from him.

Q. From whom?

A. From Mr. De La Lama.

Q. And how much did you pay him for the opium? A. Thirteen hundred dollars.

Q. And where did that occur?

A. At our cabin in the Palomine Auto Court in Phoenix.

The Court: When?

A. On the night of the 29th the opium was delivered to our cabin.

Mr. Beardsley: I would like to offer the further objection——

A. 29th of June.

Mr. Beardslee: If your Honor please, I desire to make a record at this time.

The Court: Will you wait at this moment until the witness has finished his statement as to the year, and then I will give you that opportunity.

A. It was on the 29th of June, 1946.

The Court: Now, Mr. Beardslee?

Mr. Beardslee: The further objection, it is incompetent because it is not the best evidence. He says he purchased four cans of opium. If he did I'd like to have him produce them right now. Otherwise, his testimony as to that is entirely incompetent and inadmissible.

(Testimony of Hugh Olivey.)

The Court: The objection is overruled. You may make a demand now upon him or later in connection with your cross-examination if you wish.

Mr. Beardslee: Exception, if your Honor please.

The Court: Allowed.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Beardslee:

Q. You said that you were a special employee of the government in June. What did you mean by that?

A. I was working with Mr. Van Treel.

Q. What type of work were you doing?

A. We were traveling around the country and meeting different dealers in narcotics.

Q. I see. And how long had you been engaged in that type of business?

A. Oh, during that spring.

Q. When did you first go to work for the government as a special employee, as you call it?

A. In January of 1946.

Q. And have you ever been convicted of a crime? A. Yes.

Q. And what was the nature of the crime of which you were convicted?

A. Sale of narcotics.

Q. Sale. You have been a dope peddler for years, haven't you? Haven't you?

A. I was convicted in 1939 in San Francisco.

Q. Yes. But you had been peddling dope to innocent people for many years prior to that time, had you not?

(Testimony of Hugh Olivey.)

Mr. Pomeroy: I will object to the form of the question.

The Court: Overruled.

Q. (By Mr. Beardslee): Isn't that true? Let the reporter the question to the witness so that you can make up your mind to answer.

(Preceding testimony read as follows:

“Q. You have been a dope peddler for years, haven't you? Haven't you?

“A. I was convicted in 1939 in San Francisco.

“Q. Yes. But you had been peddling dope to innocent people for many years prior to that time, had you not?”)

A. No.

Q. How many years prior to 1939 had you been a dope peddler?

A. Just during the fall of 1938.

Q. When were you finally caught at your occupation? A. In the 5th of January of 1939.

Q. I see. And you are not only a peddler, you were also a user, were you not? A. Yes sir.

Q. Just answer so that the court reporter can hear it. Don't nod your head.

A. Yes, sir.

Q. The answer was yes? A. Yes.

Q. How long have you been a narcotic addict?

A. Approximately 15 years.

(Testimony of Hugh Olivey.)

Q. I see. Have you ever tried to obtain a cure for it? A. Yes.

Q. When?

A. In 1939 I went to Fort Worth, Texas, for two years.

Q. Well, that was the result of your sentence?

A. Yes.

Q. Your penitentiary term that you received?

A. Yes.

Q. All right. And then when you were released you again became an addict, did you not? —

A. Yes.

Q. And have been a hop head—pardon me—have been a dope fiend ever since, haven't you?

A. Up until recently, yes. I am now in the hospital.

Q. Up until how recently?

A. I am now in the hospital, Swedish Hospital.

Q. Up until how recently, was the question.

A. This last summer, about three months ago I went to Crown Hill Sanitarium and took a cure.

Q. You testified about conversations and dealings that you had with Mr. De La Lama in June terminating, I believe, June 29 if I understood your answer correctly, of last year. Is that correct?

A. Yes.

Q. And you were a dope fiend then, were you not? A. Yes.

Q. And were using it right along?

A. Yes.

Q. And how did you acquire your dope? Government agents give it to you? A. No.

(Testimony of Hugh Olivey.)

Q. Did Van Treel give it to you? A. No.

Q. How did you get it?

A. I have been a tuberculosis patient for a number of years and——

Q. (Interrupting) I said, how did you get it?

A. From the doctor.

Q. From what doctors did you ever have a prescription for narcotics?

A. Oh, from several doctors. I have been in several sanitariums with t.b.

Q. You mean to tell me that the only narcotics that you have used in the past two or three years was prescribed to you by doctors?

A. No. I have had other drugs.

Q. What?

A. I have had other drugs, illicit drugs.

Q. Yes. And you were getting illicit drugs for your own use, were you not, in June of last year? Yes or no. A. No.

Q. You own a house of ill fame in Bellingham right now, don't you? A. No.

Q. Don't you have a woman operating a brothel for you in Bellingham today? A. No.

Q. How long since you have? Why don't you answer?

A. Well, I don't understand. I haven't had a hotel or anything.

Q. Did you know a Fred DeMoss?

A. No.

Q. Now in the county jail? A. No.

(Testimony of Hugh Olivey.)

Q. You never heard of such a party, is that right?

A. No. Never met——

Q. You have never sold dope to him?

A. I have never met anyone of that name to my knowledge.

Q. I see. Is that the only conviction you have had that you told me about, the one for being a dope peddler?

A. No. I was convicted of grand theft in San Francisco.

Q. When were you convicted of grand theft?

A. 1941.

Q. Uh-huh. That was shortly after you got out of the pen on your narcotic charge, was it not?

A. Yes sir.

Q. And will you please loosen up and tell me the other times that you have been convicted?

A. That is all my convictions.

Q. Haven't you ever been in as a vagrant?

A. Oh, I have been charged with vagrancy, yes.

Q. Often, haven't you?

A. Quite a number of times.

Q. Had to serve time for it, haven't you?

A. No.

Q. You have been run out of one town after another by various magistrates or courts, haven't you, because of being a vagrant?

A. No. I got a floater out of Salinas once, was all, on account of being tubercular.

Q. Tell the jury what you mean by a floater? We don't all understand the terms that you are familiar with.

(Testimony of Hugh Olivey.)

A. Well, I was given six months suspended sentence on condition that I leave the county because I had t. b.

Q. All right. Now that is three that we have got. Oh, you said on account of because you had t. b.?

A. That is what the magistrate specified.

Q. And what charge were you arrested and tried when you were given this so-called floater on a six months suspended sentence?

A. Vagrancy.

Q. I see. And the Court knew at that time that you were an addict?

A. No.

Q. That wasn't brought up at the trial?

A. I had no convictions at that time for——

Q. (Interrupting): You want us to understand that because you are suffering from t. b. the Court determined you were a vagrant and gave you a six months suspended sentence and told you to get out of town?

A. Yes.

Q. And that is the truth as you tell it?

A. That is what should be on the court record. That was what was in court.

Q. All right. Now how many other times have you been in jail for being a vagrant and not being wanted in any locality?

A. Well, I don't know. Quite a number of times.

Q. Twenty?

A. Not that many.

Q. Thirty? Fifteen?

A. About fifteen, I suppose.

(Testimony of Hugh Olivey.)

Q. Did Van Treel know that you were an addict when you were associating with him?

A. Yes.

Q. VanTreel using it too, was he?

A. No.

Q. You never saw him use it then?

A. No.

Q. How often did he provide the narcotics for you?

A. Mr. VanTreel never provided any narcotics for me.

Q. You said you purchased four jars of opium from the defendant in this case? A. Yes.

Q. Did you use it?

A. Just what he and I used in the cabin, and then they were given to Mr. VanTreel and he turned them over to Mr. Artiss, the supervisor for evidence.

Q. And you don't know where they are?

A. Beg pardon?

Q. You don't know where they are then?

A. They were turned over to the Federal Narcotics Office for evidence.

Q. Where? A. In Phoenix.

Q. How many other people did you contact in Phoenix, Arizona?

A. Mr. De La Lama and a fellow by the name of Cullins we met this same time.

Q. And anyone else?

A. That was all at that time.

The Court: You made a statement, "Just what he and I used", with reference to that purchase

(Testimony of Hugh Olivey.)

that you were speaking of that took place in Phoenix in your cabin. Who do you refer to by the pronoun "he", "Just what he and I used"?

A. Mr. De La Lama and I.

Q. I don't suppose you know Roy Linville, do you?

A. Yes.

Q. Oh, then you contacted him, also?

A. Not at this time, no.

Q. Contact Linville in Phoenix?

A. Not in June, no.

Q. When did you contact him?

A. In January.

Q. I see. Oh, by the way, you tried to induce De La Lama to smoke a pill that you offered him, didn't you?

A. Not that I remember.

Q. Isn't it true that in June you contacted De La Lama and after conversing with him on several different occasions you told him all about the glories of narcotics, what they would do for you, they would lift you into the clouds and all, didn't you?

A. No.

Q. All right. You say "Not that I remember." Isn't it true that you rolled a pill and offered it to him?

A. Mr. De La Lama and I both rolled pills.

Q. Just a minute. Will you answer my question? Isn't it true that you rolled a pill and offered it to him?

A. I don't remember that, no.

Q. Isn't that the first time you ever dared to suggest to Mr. De La Lama that he should start using opium?

(Testimony of Hugh Olivey.)

A. No. I don't remember suggesting such a thing. He had just delivered the four cans to us to the cabin, and we had opened them.

Q. All right. Didn't you offer him a pill and didn't he take it into the kitchen and dispose of it?

A. I don't know.

Q. By the way, with your experience you know what happens to a man when he is arrested and held in confinement that is a confirmed user of narcotics, do you not?

A. Yes.

Q. He gets awfully sick, doesn't he?

A. Yes.

Q. And so sick that he virtually becomes unconscious, in some instances does; is that true?

A. No. I never seen them that sick.

Q. You have seen them so sick that they cry for narcotics, haven't you?

A. No, I never have.

Q. You have been that sick, haven't you?

A. No, never have.

Q. Isn't that why you became a stool pigeon, so you could get more narcotics?

Mr. Pomeroy: Object to the form of the question.

The Court: Overruled.

Mr. Pomeroy: The use of the word "stool pigeon".

The Court: The ruling will stand.

A. No.

Q. All right. How much and in what form of narcotics were you using in June of 1946?

A. I was using 2 grains of morphine hypodermically, a day.

(Testimony of Hugh Olivey.)

Q. And was that the only type you were using?

A. Yes.

Q. You didn't use any other type of narcotic at all?

A. When Mr. De La Lama brought the cans of opium to the cabin we each took some of the opium and rolled it up and ate it.

Q. How often did you do that?

A. Well, we was there I believe for one day after the opium was delivered.

Q. And how much of it did you smoke?

A. We didn't smoke any of it.

Q. What did you do with it?

A. We just rolled it into a pill and swallowed it with a glass of water. What they call a——

The Court: Just a minute. I think the witness' voice has gotten so the reporter can't hear it and if that is true I don't see how anyone else can be expected to hear it. The Court directs you, keep your voice raised clear and distinct. When an objection is made by counsel wait until counsel's statement is finished before you make your statement so that there will be no conflict of voices.

Now will you read that question?

(Last question and answer read by the reporter.)

The Court: What they call a——?

A. Yen pock.

The Court: Y-e-n?

A. P-o-k.

The Court: P-o-k. Two different words?

A. I believe so, y-e-n, p-o-k.

(Testimony of Hugh Olivey.)

Q. (By Mr. Beardslee): How long have you been swallowing these opium pills?

A. Well, just during the day that these cans were at the cabin and while Mr. De La Lama was there, why I took it.

Q. Pardon me. Finish. You never swallowed opium pills at any other time, is that right?

A. Oh, I did previously, yes.

Q. Yes. All I am trying to get at is the truth. How often had you swallowed them previously?

A. Well, I used to take a couple of them a day for a period of years before I went to the pen.

Q. And that was during the time that you were peddling? A. Yes.

Q. And you were using hypodermic injections of morphine at the same time, were you?

A. No. I was using the hypodermic injections of morphine in June of 1946.

Q. I understand that you started traveling with VanTreel in about January of 1946?

A. Yes.

Q. And you traveled with him for what period of time? A. Until November of 1946.

Q. And during all that period of time he didn't provide you with any narcotics, is that true?

A. No.

Q. But he would permit you to use whatever you were able to buy?

A. Whatever was prescribed by the physician.

Q. Well, was this pill that you say you swallowed, of De La Lama's, prescribed by any physician? A. No.

(Testimony of Hugh Olivey.)

Q. Well, all right. I want to know how many illicit pills you were swallowing, or how much morphine injections you were illicitly taking during that period of time?

A. I don't understand the question.

Q. How many—during the period of time that you were traveling with VanTreel how many illegal pills of opium did you swallow?

A. I imagine De La Lama and I took about four pills apiece there in the cabin.

Q. Didn't you tell me awhile ago it was one each?

A. I don't remember specifying any exact number before. I can't say that four is the exact number.

Q. I see. Is that all, the pills that you took with Mr. De La Lama, that you swallowed during the period of time that you were travelling with Mr. VanTreel?

A. That was all I took out of those four cans that we purchased from Mr. De La Lama.

The Court: I think counsel wants to know if in addition to that source you got any other narcotics and used any other narcotics while you were in company with or assisting Mr. VanTreel?

Mr. Pomeroy: In Phoenix or otherwise, any cities that you were in.

A. Just what has been prescribed by my physician.

Q. (By Mr. Beardslee): And that is all, then, is that true? A. Yes.

(Testimony of Hugh Olivey.)

Q. Did you make purchases of opium during the period of time you were traveling with Van Treel other than the purchase that you say you made from this defendant? A. Yes.

Q. And on how many different occasions did you make purchases of opium?

A. Twice apart from De La Lama's.

Q. I see. And didn't you swallow any of that?

A. No. It was delivered in a different manner.

Q. I see. So you didn't—this is the only time that you ever swallowed pills outside of the period prior to going to the pen in 1939, is that right?

A. Yes, while I was traveling with Mr. Van Treel, yes.

Q. Getting back to what I was inquiring about before, that is the reaction that an addict has when he is placed in confinement where he can't obtain it, it is true that you suffer hallucinations, is it not?

A. No, I never seen anyone go out of their head.

Q. They become nauseated?

A. Yes, become sick to their stomach, as a rule.

Q. So that it is impossible for anyone that is an addict to go to jail and be cut off from a supply without getting sick to such an extent that the jailers or jail attaches would realize their condition right away? That is true, isn't it?

A. Well, it depends on how much of a habit the person has.

(Testimony of Hugh Olivey.)

Q. Well, how about swallowing four pills in one day. That is quite a violent habit, isn't it?

A. Oh, if you kept it up over a period of years it would be.

Q. The reason I am asking these questions, Mr. Olivey, I think it is well known that De La Lama has been in jail ever since he was arrested and it might be possible to have the jailer in attendance present. And I now want to warn you as to the seriousness of perjury in this or any other court.

In view of what I have just advised you do you say again that Mr. De Lama was an addict?

A. What I saw him take there in the cabin I don't know, or rather I wasn't with him on other days. I don't know if he kept that up steadily or not.

Q. Why, you addicts always get together, do you not, and know each other?

A. I had never known Mr. De La Lama until I met him there in Phoenix.

Q. Wherever you had gone to a strange town you became acquainted with addicts, didn't you? You know their habits and their customs? That is true?

A. Yes, to a certain extent.

Q. And you spent four days with De La Lama?

A. Yes.

Q. And during that period of time the only time you knew or thought that he might be an addict was because of the four pills you say that he consumed with you, is that right? Or do you want to change that story?

(Testimony of Hugh Olivey.)

A. I don't remember stating definitely that Mr. De La Lama was an addict. I don't know. I just say what I saw him take in the cabin.

Q. Well, thinking back again, do you remember trying to persuade him to become an addict?

A. No, I wasn't around Mr. De La Lama to that extent.

Q. You don't recall whether you had offered him a pill or not? Do you recall now whether you did?

A. No, I don't recall offering him anything.

Q. That was your business, wasn't it, to try to make addicts out of people?

A. In this case we had purchased the narcotics——

Q. I say, that was your purpose in traveling with Van Treel, wasn't it, to try to make addicts out of people?

A. No. It was to purchase narcotics from peddlers.

Q. I see. Isn't it true that you went outside and procured a hypodermic needle and a jar of hop of some kind, or morphine, brought it in to De La Lama and tried to persuade him to inject it in his arm?

A. No, I don't remember that.

Q. You were carrying a hypodermic needle with you all the time, weren't you?

A. Yes.

Q. And you were using it?

A. Yes.

Q. You say you don't remember doing that? Would you say that is not true?

A. I don't believe it is true, no.

(Testimony of Hugh Olivey.)

Q. But you would not deny but what you did that very thing, would you?

A. In a case like that in undercover work——

Q. (Interrupting): I asked you a question, please. May I have an answer?

Mr. Pomeroy: I will object to the form of the question as being argumentative.

The Court: The objection is overruled and the objection to the witness' answer is overruled. You may proceed with your answer.

A. I would like to hear the question again now.

The Court: Keep your mind on the question and do not be confused by objections made by counsel nor rulings or statements made by the Court.

(Question read.)

A. Yes, I would deny doing that.

Q. (By Mr. Beardslee): I see. Then if I understand your answer correctly, you want us to believe that you definitely did not take in a hypodermic needle and ask the defendant, Mr. De La Lama in this case, to use it?

A. I may have brought in the hypodermic needle and said that he could use it if he wished.

Q. But you wouldn't talk him into it, would you?

A. No. He was the one who had delivered the narcotics. He was showing it to us. We weren't showing it to him.

Q. I will ask you this question: If Mr. De La Lama used the hypodermic needle, used dope in that form, there would be scars on his arm, wouldn't there, or under his arm?

(Testimony of Hugh Olivey.)

A. I don't recall Mr. De La Lama taking any hypodermic.

Q. Well, that didn't answer the question. Your arms are full of scars, are they not? A. Yes.

Q. And they never leave, do they? A. No.

Q. Consequently the doctor could tell in a couple of minutes by examining Mr. De La Lama whether he had ever used any, couldn't he?

A. If he had used it hypodermically.

Q. I mean it would show on his arm whether he had ever had any hypodermic needle for the purpose of administering dope used on it?

A. Yes.

Q. How old are you, sir?

A. Thirty-eight.

Q. Thirty-eight? A. Yes.

Q. You were not in the service in the last war, I take it? A. No.

Q. What schooling or education have you had? What academic training?

A. High school education.

Q. And that was where?

A. In Vancouver, Canada.

Q. Are you an American citizen?

A. Beg pardon?

Q. Are you an American citizen?

A. Yes.

Q. Born here? A. In New York.

Q. Lived in Canada how long?

A. About twenty years.

(Testimony of Hugh Olivey.)

Q. I see. That was during your younger years of life? A. Yes.

Q. Were you using narcotics while you were in high school? A. No.

Q. How long after you came out did you commence using them?

A. Oh, it was quite a number of years after I left school.

Q. How many times have you testified in court?

A. This is the first time.

Q. Didn't you testify in any of your own cases?

A. No.

Q. How did the Court that gave you the floater know you had t. b. unless you told him?

A. I was taken into the county jail and I had a hemorrhage there and they transferred me up to the t. b. hospital.

Q. You have never taken the witness stand then in your own defense at any time, is that right?

A. No.

Q. And you have never testified in any other narcotics case? A. No.

Q. After you made this alleged purchase in Phoenix, Arizona, of the four jars you say it was turned over to the narcotics agents in Phoenix?

A. Yes.

Q. And was a charge filed there against Mr. De La Lama?

Mr. Pomeroy: I will object to that as not being the best evidence.

The Court: Overruled. If he knows.

(Testimony of Hugh Olivey.)

A. I don't know what became of that case.

Q. You are telling me the truth in that? You have no knowledge of that at all, is that true?

A. No personal knowledge of that. The only thing, I read an article in the newspaper.

Mr. Beardslee: Let the court reporter read that last answer.

(Last answer read by the reporter.)

Q. Do you know when Mr. De La Lama was arrested in this case? A. No, I don't.

Q. You never heard of any conviction against Mr. De La Lama, have you?

Mr. Pomeroy: I will object to that as not being a proper way to prove it.

The Court: Overruled.

Q. Have you? A. No.

Mr. Beardslee: That is all.

Redirect Examination

By Mr. Pomeroy:

Q. Where did you travel with Mr. VanTreel, during—what parts of the country during this eleven months you were with him?

A. From Phoenix to Canada, back and forth several times.

Q. Go into Mexico with him? A. Yes.

Q. Were you over in California?

A. Yes.

Q. In Oregon? A. Yes.

Q. State of Washington? A. Yes.

Q. British Columbia? A. Yes.

(Testimony of Hugh Olivey.)

Q. Where were the two purchases made that you say you made outside of the purchase from De La Lama? Where were those purchases made?

A. In California.

Q. Both of them? A. Yes.

Mr. Pomeroy: That is all.

Recross-Examination

By Mr. Beardslee:

Q. How many hours of the day, on an average, did you spend with VanTreed? [85]

A. We had a cabin and were together 24 hours a day.

Q. I see. Slept in the same bed and ate always together, were in each other's company 24 hours a day during all that period of time, is that true?

A. Yes.

Q. So then Mr. VanTreed then knew just how much dope you were taking, or did you try to do that on the side?

A. No, I had my prescription.

Mr. Beardslee: But not for the opium. That is all.

The Court: Step down. Call your next witness.

(Witness excused.)

Mr. Pomeroy: The government rests.

The Court: The plaintiff rests. The jury is excused until 1:45 and may now retire.

(Whereupon, at 11:50 a.m., the jury was excused.)

The Court: If there are any matters to be taken up in the absence of the jury, the Court requests you to do so now.

Mr. Beardslee: If your Honor please, first, in view of what this last witness has testified to, I'd like to have Lt. Belland instructed to return for the afternoon recess solely for the purpose of showing Mr. De La Lama's condition at the time of his arrest, as to whether he was a narcotics user or not.

Now if the lieutenant has some other business that is important, he can just send anyone up from down there, because I want to obtain——

The Court: The Lieutenant will kindly return at 1:45. He is excused until that time.

Mr. Beardslee: That is all I had in mind.

The Court: Any motions to be made at the close of the government's case?

Mr. Beardslee: Yes, your Honor.

The Court: The opportunity is given you now for that purpose.

Mr. Beardslee: Your Honor please, at this time the defendant challenges the sufficiency of the government's case and moves for a dismissal, and instructed verdict of not guilty.

Analyzing all of the testimony, the government has produced nothing whatsoever that tends to tie up the defendant with the possession of the opium as charged in this case. The last witness the government apparently relies on. He testified to an alleged offense over in Phoenix, Arizona. I think your Honor has probably read something about that,

there was a case pending against him there growing out of the transactions testified to by the last witness, and it has either been dismissed or is still pending. But anyway, that is a situation that will take care of itself.

Now all the government has been able to prove thus far is that De La Lama rode from Phoenix, Arizona, to Seattle in Vasquez's car. That part of that time he may have been driving the car. That in that car there were 13 jars of opium in the secret compartment. That opium was found on the person of Lucian Vasquez, none ever found on the person of this defendant.

That Vasquez, whom the government produced as a witness, testified in direct accordance with the story that he told at the time of his arrest by the city police and the federal narcotics agents. They brought him as a witness, it is part of their case, that De La Lama knew nothing of that opium, that he had no control over it, that he was coming out here to see his brother shortly after being discharged from the Army. At no time did he have any in his possession.

Sure, they can say "circumstantial evidence." But I contend the same thing would be true of me if some opium was found in the car of a train that I am riding in where it is concealed. There isn't any evidence even that he knew that Vasquez was an addict. But if he had known that there would be no reason for suspecting that he would be carrying opium in any such quantities as he had.

Vasquez told the story to the Seattle police that was verified by Lieutenant Belland. He also told a story here in court, as a government witness. That witness completely absolved De La Lama of any guilt in this charge.

The Court: The challenge is overruled and the motion denied.

Mr. Beardslee: Exception.

The Court: Allowed. Let's be prepared to proceed at 1:45.

Mr. Pomeroy: I gave an additional instruction to counsel and also to the Court this morning.

The Court: I have that. Court is recessed until 1:45 p.m.

(Whereupon, at 12 o'clock noon an adjournment was taken until 1:45 o'clock p.m.)

Mr. Beardslee: Lieutenant Belland, will you take the stand, please?

GILBERT L. BELLAND

called as a witness on behalf of Defendant, having been previously sworn, testified as follows:

Direct Examination

By Mr. Beardslee:

Q. You have been introduced to the jury before, Lieutenant Belland, so I don't need to go through the formalities. You were present and participated

(Testimony of Gilbert L. Belland.)

in the arrest of Lucian Vasquez and Robert M. De La Lama, the defendant in this case, on March 23, were you not? A. Yes, sir.

Q. And you have had occasion to interview both the defendant and Vasquez for several days, have you not—two or three days, anyway? A. Yes.

Q. Did Vasquez become sick and ill while in the jail through lack of narcotics?

A. Vasquez did become sick.

Q. Was it obvious to you and everyone else concerned that he was ill by reason of the fact that he was at that time using narcotics?

A. His appearance to me indicated that he was suffering from the withdrawal symptoms of addiction.

Q. By withdrawal symptoms, that is being deprived of narcotics?

A. He wasn't getting what he apparently had been used to taking.

Q. You are in charge, are you not, of the narcotics division of the Seattle Police Department?

A. That is correct.

Q. And you have been in that detail or division, whatever you call it, for a matter of years, haven't you? A. That is right.

Q. During those years you have had occasion to observe addicts? A. Yes, sir.

Q. And you can invariably spot the symptoms of an addict or narcotic user, isn't that true?

A. If they have a very mild habit it would be questionable whether even a physician could detect

(Testimony of Gilbert L. Belland.)

that. But where they do have a habit of considerable proportions it is obviously noticeable.

Q. A man swallowing four opium pills in one day, you wouldn't have any difficulty at all, would you?

A. I doubt that.

Q. State whether you observed any symptoms whatsoever that the defendant, Mr. De La Lama, has ever used narcotics in any form.

A. It was—Vasquez and he both seemed tired and sort of drowsy-like, but he didn't make any request for narcotics and it was my honest opinion that he was not a user of narcotics. However, that is something that I couldn't be positive of because he could take a small amount in the stomach habit and still he wouldn't show it.

Q. There were no physical symptoms of his having ever used narcotics?

A. To me it didn't register that he was a user.

Q. It was your opinion definitely that he was not?

A. That he was not.

Cross-Examination

By Mr. Pomeroy:

Q. Lieutenant Belland, in the vernacular of your work as a narcotics law-enforcement officer, do you use a term "a pleasure smoker?"

A. That is right.

Q. What does that term mean? What is a pleasure smoker?

A. Well, a pleasure smoker is applicable to people that I know of my own knowledge, that they do

(Testimony of Gilbert L. Belland.)

smoke occasionally. They will get together maybe once a week, maybe every three weeks or a month or maybe a longer period. But whenever they have an opportunity and as they call it, cheat and get a chance to smoke, they will smoke. I have seen those people be confined and they haven't shown any withdrawal symptoms.

Q. In other words, they are not confirmed addicts, is that correct? A. That is correct.

Q. They merely partake of it once in a while?

A. That is right.

Mr. Pomeroy: That is all.

Redirect Examination

By Mr. Beardslee:

Q. You in your answer to counsel's question said that when they had an opportunity they would get together and smoke. You meant that to be true, did you not?

A. Well, that has been my opinion, that when they can and have it, the situation is suitable, those people will smoke.

Q. If a so-called pleasure smoker, though, had a constant opportunity, in other words if he was a dealer in narcotics, he would be using it all the time, would he not?

A. I rather think that he would have used it.

Mr. Beardslee: That is all.

The Court: You may be excused from the stand.

(Witness excused.)

JAMES M. SCHWERDFIELD

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Beardslee:

Q. State your name, please?

A. James M. Schwerdfeld.

Q. Spell it, please.

A. S-c-h-w-e-r-d-f-i-e-l-d.

Q. And you are a deputy U. S. Marshal?

A. That is right.

Q. Were you present with me when under authorization of the Court I attempted to interview Lucian Vasquez at about five or ten minutes after 12 yesterday? A. I was.

Q. And prior to going down to be interviewed, did you stop to invite along also a Federal narcotics agent and found that he was out?

A. That is correct.

Q. Would Vasquez talk to me at all?

A. He would not.

Mr. Beardslee: That is all.

Mr. Pomeroy: No questions.

The Court: Step down.

(Witness excused.)

ROBERT M. DE LA LAMA

the defendant, called as a witness in his own behalf,
first duly sworn, testified as follows:

Direct Examination

By Mr. Beardslee:

Q. Your name is Robert M. De La Lama?

A. Yes.

Q. And you are the defendant in this case?

A. Yes.

Q. How old are you? A. Thirty-four.

Q. I am going to have to ask you to speak a little
bit louder. A. Thirty-four.

Q. And where do you reside?

A. Phoenix, Arizona.

Q. How long have you lived there?

A. Born and raised there.

Q. What has been your occupation in the past
three or four years?

A. Salesman, and I have been in the Army.

Q. How long were you in the Army and when?

A. Twenty-nine months.

Q. And when were you discharged from the
Army. A. October the 11th, 1945.

Q. Honorable discharge or otherwise?

A. Yes, sir.

Q. Where did you serve while in the Army?

A. England, France, Germany, Belgium, and
Holland; Czechoslovakia.

Q. Were you wounded during that period of
service? A. I was.

Q. Receive a Purple Heart? A. I did.

(Testimony of Robert M. De La Lama.)

Q. In addition to that did you receive two citations for bravery in action? A. I did.

Q. Where is your discharge now?

A. I have a photostatic copy of it in the county jail.

Q. Down in the jail? A. Yes.

Q. Were you arrested in Seattle approximately March 23, 1945? A. I was.

Q. With Lucian Vasquez at the same time?

A. Yes.

Q. At the time of your arrest were you confined in jail? A. I was.

Q. And how long did you remain in jail?

A. I don't exactly remember. It was three or four days. I think, or four or five days. I don't remember how long it was.

Q. While you were in there were you interviewed by police officers and also federal officers?

A. I was.

Q. Did they thoroughly go into your history?

A. I think they did.

Q. You were asked many questions, where you came from, where you had lived and what your connections were? A. Yes.

Q. Was a charge filed against you on that occasion, or were you released?

A. I was released.

Q. And upon your dismissal what did you do?

A. Well, I went home.

Q. There has been some inferences that you paid me an attorney fee for Vasquez. Did you?

A. I did not.

(Testimony of Robert M. De La Lama.)

Q. Prior to your coming over to Seattle on this trip how many times had you seen me?

A. I didn't get the question.

Q. Did you ever see me more than one time prior to your charge in this case?

A. In this case here?

Q. Yes. A. Yes, I did.

Q. I mean before you were brought over from Arizona on this charge on which you are standing trial, had you ever seen me more than one time?

A. I saw you in the county jail.

Q. Was it county or city?

A. Oh, you are talking about the——

Q. I am talking about your arrest on March 23, 1946.

A. Oh, in the city jail I think I saw you once there.

Q. Did you ever see me after that until you were brought over on this charge?

A. No, I didn't.

The Court: Give him about the approximate date.

Q. When were you brought over to Seattle on this charge?

The Court: The last time.

A. I have been here about two weeks.

Q. About how long?

A. Been in jail about two weeks there.

Q. Well, prior to your being brought over, this two-week period you have been in jail here in Seattle, had you ever seen me but once before in your life?

A. Just one time.

(Testimony of Robert M. De La Lama.)

Q. Did you pay me anything on that occasion?

A. No, I didn't.

Q. There has been some testimony that you transferred or handed Lucian Vasquez \$500 at the time of your release from jail. Is that true or untrue? A. That is true.

Q. Did Lucian Vasquez have any money with him at that time? A. I imagine he did.

Q. You didn't answer loud enough. I think your answer was, "I imagine he did." I can half-way read your lips but the court reporter's head is turned the other way. You will have to speak a little bit more loudly.

The Court: You see, every person in the jury box wants to hear and is entitled to hear every word you speak. And if you speak words which they do not hear, why then your speaking them will not do you any good or anyone else. So you ought to have that in mind, that when you are asked to speak a word you ought to speak it so that everyone here who is supposed to hear it can do so. You have an interest in your own behalf to do that.

Q. There has been some testimony that Vasquez had about fourteen or fifteen hundred dollars on him. Is that true or not, do you know?

A. I don't know.

Q. All right. Where did you obtain the \$500 or whatever amount it was that you authorized to be transferred over to Lucian Vasquez?

A. It was money belonging to him.

(Testimony of Robert M. De La Lama.)

Q. Have you ever been a user of narcotics at any time? A. Never.

Q. In any way, shape, manner or form?

A. Never have used it.

Q. Again I am going to ask you to speak a little louder. Would you be willing to submit to a doctor's examination at any time in an effort to determine whether you have or not? A. Yes, I am.

Q. Have you ever engaged in the traffic of narcotics? A. No, I haven't.

Q. Have you ever at any time in your life sold or offered to sell any narcotics? A. Never have.

Q. Have you ever at any time had, knowingly had, in your possession, narcotics?

A. Never have.

Q. What if anything do you know about the opium that was found on the person of Lucian Vasquez and the opium that was later found in the secret compartment of his car?

A. The first I knew of that opium was when he was searched and there was a can found in his pocket, or a jar. That is the first I knew of the opium. The 13 jars they are talking about, I never saw them.

Mr. Beardslee: Can the jury hear his answers?

The Court: Did you hear him fairly well?

Mr. Beardslee: What was it you said you knew about or did not know about?

A. The first I knew of him having any narcotics was when he was searched and there was a jar found wrapped up in a piece of paper.

(Testimony of Robert M. De La Loma.)

Q. What was the occasion of your coming over to Seattle on or about March 23?

A. Well, I have a brother in Tacoma and I thought I would come over to see him, so Vasquez asked me if I wanted to ride with him because I told him about a brother being in Tacoma. And he told me he was coming that way and if I wanted to ride with him I could help him drive. My brother was working in some shipyard there or something, in Tacoma.

Q. Did you have any purpose in making the trip other than to see your brother?

A. Just to see my brother.

Q. Do you have any other brothers or sisters in the family? A. Yes, I have.

Q. Just before the noon recess a witness testified that you swallowed some opium pills with him. Is that true or untrue? A. It is not true.

Q. Did you know the witness that testified?

A. No, I don't know him. I meet him in Phoenix.

Q. I see. Did he at any time ever attempt to induce you to use narcotics? A. He did.

Q. And in what form?

A. At first he started talking about narcotics there in the cabin there, and then——

Q. (Interrupting): You are going to have to talk louder because even watching you now I have difficulty hearing you.

A. At first he started talking about narcotics there in his cabin. And then he says, "Well, wait

(Testimony of Robert M. De La Lama.)

a minute," he says and he went outside and brought a package like that from the outside. And he had one of them needles, what you call them?

Q. Hypodermic needles?

A. Hypodermic needle, and some jars there, and a little bottle like that of liquid fluid. And he wanted me to take a shot of it. I told him I didn't care for it, so then he got some opium out of a jar and stuck a needle in it and rolled up a pill and give it to me. And I went in the kitchen of the cabin there and turned the water on, mashed the pill and put it in the sink. And I told him I had swallowed it. But I actually threw it away. Just one is all he gave me.

Q. Under what circumstances did you meet him and where?

A. I met him at the El Paso Buffet.

The Court: El Paso Buffet is what he said.

Q. Is that a bar? A. That is a bar.

Q. Had you been drinking at the time, or not?

A. No. I come in there and the bartender introduced us.

Q. Did he tell you who he was. Olivey?

A. No.

Q. Or what he was doing?

A. No, he didn't.

Q. Did he make any effort to pursue you around Phoenix, renew acquaintance?

A. Yes, he did.

Q. Had you ever seen him before that time?

A. No, I hadn't.

(Testimony of Robert M. De La Lama.)

Q. Have you ever seen him since that time?

A. Never have.

Q. When did you first learn that he was a user of narcotics?

A. Not until today. I mean, he used them in Phoenix down there but I didn't know he was an addict, no.

Mr. Beardslee: You may cross-examine.

Cross-Examination

By Mr. Pomeroy:

Q. How much money did Vasquez give you that you had of his on your trip to Seattle?

A. Five hundred I remember.

Q. How much money did you have altogether?

A. I had about nine hundred.

Q. Why did Vasquez give you \$500 of his to carry for him?

A. Just give it to me to carry for him. He said it was——

Q. He said what?

A. He give it to me in the car when we was going up to the police station. He told me he was probably going to stay in jail, and to try and make bond for him.

Q. And then you gave him the five hundred back? A. When I couldn't do no good.

Q. And four hundred of that was your own money? A. That is right.

Q. By what means did you travel back to Phoenix after you were released? A. Train.

(Testimony of Robert M. De La Lama.)

Q. And how soon after you were released did you go back to Phoenix? A. That same day.

Q. After you were released you went back the same day? A. Correct.

Q. How many days had you been in Seattle prior to the time you were first arrested?

A. I think we slept here one night.

Q. And you were arrested the next day? .

A. The next day.

Q. What occupation have you had since you were discharged from the Army?

A. I haven't had much occupation. I never worked because I got an injury in the back.

Q. I can't hear you.

A. I had an injury in the Army, in my back.

Q. And you didn't work then from October until the present time, is that right?

A. That is right.

Q. What was your occupation before you entered the Army? A. Salesman.

Q. What kind of salesman?

A. Automobile and furs.

Q. Automobiles and furs?

A. That is right.

Q. And how long were you a fur salesman?

A. Oh, about a year.

Q. Was that just prior to your going in the Army?

A. Well, about a year before I went in the Army.

(Testimony of Robert M. De La Lama.)

Q. You had been a fur salesman for about a year, about a year prior to the time you went in the Army, is that correct? A. That is right.

Q. And how many years were you an automobile salesman?

A. Oh, about eight or nine years.

Q. And what did you do the year prior to your entry into the Army?

A. I don't quite get you.

Q. What was your occupation for the twelve months immediately preceding your induction into the U. S. Army? A. I had a card game.

Q. You had a card game? A. I did.

Q. What other occupation did you have?

A. Nothing much.

Q. Where was the card game?

A. In Phoenix.

Q. Where in Phoenix?

A. In Third Street between Washington and Adams, on the alley.

Q. What was the name of the place?

A. Didn't have no name.

Q. Was it a secret card game?

A. No, it wasn't secret. Everybody knew about it.

Q. What is that?

A. It wasn't secret. Everybody knew about it.

Q. Well, was it a card room or just a game?

A. Just a game.

Q. This bartender who introduced Mr. Van Treel and Mr. Olivey to you, what was his name?

A. Collins.

(Testimony of Robert M. De La Lama.)

Q. Did he have a nickname?

A. Tiger I think they called him.

Q. The Tiger? A. Yes.

Q. And how long had you known him?

A. Well, he is a local boy from Phoenix. He went to school with me.

Q. You have known him for years, is that right?

A. That is right.

Q. And he was also arrested for narcotics, wasn't he? A. I don't know.

Mr. Beardslee: Object to that as not cross-examination and immaterial.

The Court: Sustained.

Q. (By Mr. Pomeroy): Mr. De La Lama, after you met Mr. Olivey and Mr. Van Treel in the El Paso Buffet in Phoenix did you use their automobile for your own purposes?

A. No, I didn't.

Q. You never drove it? A. No, I didn't.

Q. Did they have an automobile?

A. I don't know.

Q. How did you go from the El Paso Buffet out to their auto court? A. In a car.

Mr. Beardslee: Let me suggest you keep your voice up.

The Court: Will you repeat your answer?

A. I borrowed an automobile to go down there.

Q. (By Mr. Pomeroy): From whom did you borrow the automobile? A. My brother.

Q. Is that the same brother that you came up here to visit?

A. No, it is another brother in Phoenix.

(Testimony of Robert M. De La Lama.)

Q. What is the first name of the brother that you borrowed the car from? A. Pete.

Q. And what is the name of the brother that you were coming to Tacoma to visit?

A. Mike.

Q. Now, Mr. De La Lama, why was it necessary for you to tell Mr. Olivey and Mr. Van Treel that you had swallowed the opium? Why didn't you tell them that you didn't want anything to do with it?

A. Because—I don't know, they asked me if I had swallowed it and I told them I had.

Q. Why didn't you tell them you didn't want anything to do with it?

A. I didn't want them to think that I was backing out on it.

Q. Backing out of it?

A. Of taking the stuff after they gave it to me.

Q. Why didn't you tell them you didn't want it?

A. I did, and they kept insisting and insisting that I take it.

Q. They insisted that you take this opium?

A. That is right.

Q. You had never seen it before? A. No.

Mr. Pomeroy: That is all.

Mr. Beardslee: That is all.

(Witness excused.)

Mr. Beardslee: I have another witness, if your Honor please, that I referred to the jury about. They tell me it is going to be necessary to have another order *ad subjiendum*. That is going to delay the trial. The last witness' testimony would

be very brief, and I don't consider it of sufficient importance to tie up the trial any longer, so I will waive it. We will rest with the renewal of my motion.

The Court: The defendant rests, is that what you say?

Mr. Beardslee: Yes, your Honor, and with respect to the motion made at the close of the government's case, does your Honor care to have that renewed to any extent?

The Court: You may, for the record, renew it and the Court will rule upon it upon your stating that it is renewed.

Mr. Beardslee: I now renew the motion made, if your Honor please, at the close of the government's case without further argument, in view of the fact——

The Court: The Court is ready to rule upon it, and the motion is denied.

Mr. Beardslee: Allow me an exception?

The Court: Allowed.

Mr. Pomeroy: No rebuttal.

(Whereupon, the jury was temporarily excused and the Court and counsel conferred in chambers.)

(The jury then returned to the jury box to listen to the closing arguments of respective counsel, and the instructions of the Court, to which neither side took any exceptions.)

(Whereupon, at 4:30 o'clock p.m. the jury retired to consider their verdict.)

State of Washington,
County of King—ss.

I, Helen K. Wilkinson, do hereby certify that I acted as the official court reporter in the above-entitled court and as such was in attendance upon the hearing of the foregoing matter.

I Further Certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ HELEN K. WILKINSON,
Acting Official Court
Reporter.

[Endorsed]: No. 11664. United States Circuit Court of Appeals for the Ninth Circuit. Robert M. De La Lama, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed August 4, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.